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Writ Appeal No.1034 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2023

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**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI**

**Writ Appeal No.1034 of 2020
and
C.M.P.No.12839 of 2020**

The Principal Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Secretariat,
Chennai - 600 009.

.. Appellant

Vs.

1.K.Kumaravel
S/o.M.Krishnasamy

2.A.Krishnan
S/o.M.Alagappan

3.T.Pari
S/o.Late A.Thangamani

4.R.Kandasamy
S/o.Late R.K.Rajagopal

5.Liliyan Swarana Kalai
D/o.K.Pankrose



6.M.Kumar
S/o.D.Mani

7.C.Rajendran
S/o.K.Chinnakali

8.The Member Secretary,
Chennai Metropolitan Development Authority,
Chennai - 08.

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order of this Court passed in W.P.No.7456 of 2009 dated 14.02.2018

For Appellant : Mr.G.Nanmaran,
Special Government Pleader

For Respondents : Mr.V.Vijay Shankar [R1 to R7]
No appearance [R8]

JUDGMENT

[Delivered by **R.SUBRAMANIAN, J**]

The Government is on appeal challenging the order of the writ Court allowing the writ petition filed by the respondents 1 to 7 quashing the order of the Government refusing approval for upgradation of their pay scales from Rs.9100-275-14050 (Special Grade) to Rs.10000-325-15200 with effect from 18.10.2002 with consequential arrears.



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2. The respondents 1 to 7 were appointed as Community Officers in the eighth respondent organization viz., Chennai Metropolitan Development Authority between 1979 and 1984. Initially, their scale of pay was fixed at Rs.525-25-675-30-855-35-925 and there were subsequent revisions and finally, their pay scales were fixed at Rs.5900-200-9900 (ordinary), Rs.8000-275-13500 (selection grade) and Rs.9100-275-14050 (special grade). Since they did not have any promotional avenue and they were stagnated in the same post over 20 years, the respondents 1 to 7 sought for upgradation of their posts to a higher scale of pay. The Chennai Metropolitan Development Authority approved the said proposal on 18.10.2002 and forwarded the same to the Government for its approval. The Government negatived the request on the ground that there was a ban of recruitment and upgradation is equivalent to creation of new post.

3. After the ban was removed, there was another request by the respondents 1 to 7 for upgradation. The proposal was again approved by the Chennai Metropolitan Development Authority on 20.07.2006 and it was forwarded to the Government. It was again negatived on 24.02.2009 on the



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ground that upgradation amounts to creation of new post and there was a ban for creation of new post. A further ground was also added to the effect that the resultant stagnation in the same post due to absence of promotional avenue would be cured by granting them special grade and selection grade pay. This order of the Government was the subject matter of challenge in the writ petition.

4. While the respondents 1 to 7 as the petitioners before the writ Court mainly contended that the approval of the Government was not required, the respondents in the writ Court, viz., Government and the Chennai Metropolitan Development Authority projected Section 124 of the Town and Country Planning Act, 1971, to contend that in view of Section 124 (1) of the Town and Country Planning Act, 1971, prior approval of the Government was mandatory.

5. The writ Court, after analysing the provisions of Section 124 of the Town and Country Planning Act, 1971, which reads as follows:

"124. Power to make regulations.- (1) Any planning authority may, with the previous approval of the Government, make



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regulations, [whether prospectively or retrospectively] not inconsistent with this Act and the rules made thereunder for enabling it to perform its functions under this Act or the rules made thereunder.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for --

(a) the time and place of meeting of the planning authority, the procedure to be followed in regard to transaction of business at such meeting and the quorum necessary for the transaction of such business at a meeting;

(b) the powers and duties of the officers and servants of the planning authority;

(c) the salaries, allowances and conditions of service of officers and servants of the planning authority;

(d) the terms and conditions for the continuance of use of any land used otherwise than in conformity with a development plan;

(e) the maintenance of minutes of the planning authority and the transmission of copies thereof to Government;

(f) the person by whom and the manner in which payments, deposits and investments may be made on behalf of the planning authority;

(g) the custody of moneys required for the current expenditure of the planning authority and investment of moneys not so required;

(h) the maintenance of accounts;

(3) The Government may, by notification, rescind any regulation made under this section and thereupon, the regulation shall cease to have effect."

concluded that Section 124(1) of the Town and Country Planning Act, 1971



would not apply as it deals with making of regulations dealing with the subjects mentioned in sub-section 2 of Section 124 of the Town and Country Planning Act, 1971 and not with upgradation of posts. On the said finding, the writ Court concluded that once the authority had decided to upgrade the posts, a further approval from the Government was unnecessary and therefore, while quashing the order of the Government, the writ Court directed the authority to sanction the benefits with effect from 18.10.2002, which is the date on which the proposal was first accepted by the authority. Aggrieved, the Government has come on appeal.

6. We have heard Mr.G.Nanmaran, learned Special Government Pleader, appearing for appellant/Government and Mr.V.Vijay Shankar, learned counsel appearing for respondents 1 to 7. The eighth respondent Chennai Metropolitan Development Authority though served is unrepresented.

7. Mr.G.Nanmaran, the learned Special Government Pleader, while reiterating the submissions made before the writ Court would add that the



writ Court lost sight of G.O (Ms) No.656, Finance (BPE) Department, dated 13.11.1998, which provides that all Boards and statutory corporations should take the prior approval of the Government if they are creating or upgrading posts, which carry pay scale of Rs.10,000-324-15,200 and above. Therefore, according to him, the conclusion of the writ Court that prior approval of the Government is unnecessary is incorrect.

8. Contending contra, Mr.V.Vijay Shankar, learned counsel appearing for respondents 1 to 7, would point out that upgradation is different from revision of pay scales. According to the learned counsel, the demand of the respondents 1 to 7 was that their pay scale should be revised to a higher scale of pay due to absence of promotional avenue and considering their qualifications, viz., post graduation. The same would not result in upgradation of the post. It is only mere revision of pay. Therefore, neither Section 124 of the Town and Country Planning Act, 1971 or G.O (Ms) No.656, Finance (BPE) Department, dated 13.11.1998, would apply and the decision of the Chennai Metropolitan Development Authority would itself be sufficient to implement the revision.



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9. We have considered the rival submissions.

10. We are unable to fault the writ Court for having concluded that Section 124 of the Town and Country Planning Act, 1971, would not apply. A reading of Section 124 of the Town and Country Planning Act, 1971, would show that prior approval of the Government is required for framing regulations touching upon any of the subjects, which would fall u/s.124(2) of the Town and Country Planning Act, 1971. Section 124 of the Town and Country Planning Act, 1971, will not apply to a case where upgradation or revision of pay scales of a particular post is under consideration.

11. However, we are unable to countenance the submission of Mr.V.Vijay Shankar to the effect that G.O (Ms) No.656, Finance (BPE) Department, dated 13.11.1998, would not apply. When the pay scale of a particular post is to be revised upwards, the post has to be necessarily upgraded to a higher level or there should be a revision of pay scales across the Board based on recommendation of the Pay Commission or any other supervening circumstances. The pay band of a particular post cannot be



revised to a higher pay band without the post being upgraded to a higher level. Therefore, G.O (Ms) No.656, Finance (BPE) Department, dated 13.11.1998, would apply when there is a upward revision of the pay scale of any post, which carries the pay scale of Rs.10,000-324-15,200 and above and not below that. This is clear from the language used in G.O (Ms) No.656, Finance (BPE) Department, dated 13.11.1998, which reads as follows:

"GOVERNMENT OF TAMIL NADU
ABSTRACT

State public sector undertaking creating and upgradation of posts and appointment of persons in Government companies/Boards prior approval of Government at certain levels revised orders issued.

FINANCE (BPE) DEPARTMENT

G.O.Ms.No.656

Dated 13.11.1998

Read

1. G.O.Ms.No.816 Finance (BPE) Department, dated 20.10.92
2. Letter No.588/BPE/95 Finance (BPE) department dated 29.3.93.
3. G.O.Ms.No.162 Finance (PC) Department dated 13.4.98
4. G.O.Ms.No.200 Finance (BPE) Department dated 6.5.98.

ORDER:

In the Government order first read above the state public sector undertakings/Boards were requested to obtain prior approval of the Government for creation or upgradation of posts for the first two levels of posts below Chief Executive Officer or for posts carrying scale of Rs.4000 - 4500 and above whichever is higher and for and intent and promotions to posts and level below Chief Executive Officer.



2/- In the Government Order 2nd read above it was further instructed that the various conditions stipulated in G.O.Ms.No.816 Finance (BPE) Department dated 20.10.92 such as need for economy in expenditure approval of government in case any dissenting views expressed by the Director representing finance referring the matter to Government in case the Board feels so far any specific clarification even if the creation of post appointment to post is allowed as per orders empowering the corporation etc. will have to be incorporated in the Articles of Association in order to avoid wrong interpretation of the Government order.

3/- The Government in the G.O. third read above have issued orders on revised scales of pay to the Government employees based on the recommendations of the official committee on pay revision and in the G.O. fourth read above the state public sector undertakings/Boards were allowed to do the same, subject to certain conditions. Since there are revised scale of pay of Rs.3000-100-3500-125-4500 has been revised Rs.10000-325-15200 it has become necessary to revise the order issued in the G.O. 1st read above suitably.

4. The Government in partial modification of the orders issued in the G.O. first read above issue the following revised instructions:

- I. For creation of upgradation of posts the public sector undertakings/Boards should obtain prior approval of the Government for the first the levels in posts below the Chief Executive Officer in respect of each division wing of the public sector undertakings/Board. This bill imply that General Manager/Chief Engineer/Chief Accounts Officer/Secretary etc. who are directly reporting to the Chief Executive Officer/Chairman and Managing Director/Managing Director/Joint Managing Director/Executive Director (i.e. to the level officers) are the first level officers and the officers who are at the next level below the first level officers are the second level officers. Hence for the above said first two level posts for creation and upgradation prior approval of the Government is required. ***It is further clarified that in the above context, for***



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creating or upgrading posts carrying a scale of pay of Rs.10,000-325-15,200/- and above only prior approval of the Government shall be required. (Emphasis supplied)

- II. For appointment and promotions of officers in the first level i.e. and level below CEO/CMD/MD/JMD/ED prior approval of the Government is required.

5. The Chief Executive Officers of state public sector undertakings/Boards are requested to bring the contents of this G.O. to the notice of the Board of Directors immediately and also to initiate suitable action for amending the relevant provisions in the Articles of Associations/Service Rules/Acts as the case may be to incorporate the instructions contained in para 4 above."

12. The language used in the said Government Order is very clear to the effect that prior approval of the Government is required only for upgrading the posts, which carry pay scale of Rs.10,000-324-15,200 and above and not for upgradation of posts which carry a lesser pay scale. We have already referred to the pay scale that is applicable to the respondents 1 to 7, which is admittedly less than Rs.10,000-324-15,200.

13. Therefore, in our considered opinion that G.O (Ms) No.656, Finance (BPE) Department, dated 13.11.1998 would not stand attracted since the post, which is sought to be upgraded, does not carry pay scale of Rs.10,000-324-15,200. If G.O (Ms) No.656, Finance (BPE) Department,



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dated 13.11.1998 does not apply, the prior approval of the Government is not required. The essential consequence would be the order of the Chennai Metropolitan Development Authority approving the upgradation dated 18.10.2002 will have to be implemented.

14. We, therefore, sustain the order of the writ Court though for different reasons. The Chennai Metropolitan Development Authority will calculate the benefits that accrue to the respondents 1 to 7 in view of its order dated 18.10.2002 and disburse the benefits within a period of four (4) months from the date of receipt of a copy of this order.

This Writ Appeal fails and it is, accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.S.M., J] [K.G.T., J]
21.02.2023

Index: Yes
Speaking Order
Neutral Citation : Yes
gm



Writ Appeal No.1034 of 2

To

The Member Secretary,
Chennai Metropolitan Development Authority,
Chennai - 08.



WEB COPY



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