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W.A.No.2409 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.08.2024

Delivered on: 22.10.2024

CORAM :

THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL

W.A.No.2409 of 2022

The Management
Tamil Nadu Khadi & Village
Industries Board
Rep. By its Assistant Director
No.11, Industrial Estate
Guindy, Chennai-32

...Appellant/Petitioner

Vs

1.The Workmen
Rep. By its Secretary
Industrial Estate General Workers Union,
No.11, Lawyer Jaganathan Street
Guindy, Chennai-600 032

2.The Presiding Officer
II Additional Labour Court
Chennai-600 104.

.... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent as against
the order passed in W.P.No.39320 of 2015 dated 15.11.2019.

For Appellant : Mr.P.S.Raman, Advocate General
Assisted by Mrs.R.Uma

For Respondents : Ms.R.Vaigai, Senior counsel
Asst. by Anna Mathew for R1



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R2- Court.
JUDGMENT

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Per J.NISHA BANU, J.

This writ appeal is filed as against the order passed by the learned Single Judge dated 15.11.2019 in W.P.No.39320 of 2015, whereby, the appellant-Khadi Board was directed to pay Rs.5,00,000/- to the five workmen and to the legal heirs in respect of four workmen. The balance amount of backwages was also directed to be settled within a period of three months.

2. The learned Single Judge while confirming the award in the above writ petition, found that the workmen were reinstated in service and working but unable to receive the salary as applicable to them even after reinstatement.

3. The learned Single Judge observed that the appellant-Board challenged the similar award in W.P.No.1160 of 2009; against that order, review application was also filed and this court considered all the facts and circumstances as well as the legal grounds raised by the writ petitioner-Board and passed an order on 04.01.2016, holding taking note of the guidelines laid down by the Apex Court in Jaipur Zilla case and the decision of the Supreme



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Court in *Fabril Gasosa Case Vs. Labour Commissioner and others (1997*

(3)SCC 1501), the Management/Khadi Board is directed to pay the employees/legal heirs of the employees entire backwages based on the last drawn wages, as this court is of the view that at this distant point of time relegating them to invoke the remedy under Section 33-C(1) of the I.D.Act is not going to help anyone and the last drawn wages cannot be a dispute at all, also, it is open to the employees to invoke section 33-C(2) of the I.D.Act to claim revision of wages, if any and Section 29 of I.D.Act for prosecution.

4. Challenging the order of the learned Single Judge, this writ appeal is filed by the Khadhi Board stating that the award passed by the Labour court and the order passed by the learned Single Judge in confirming the same is bad in the eye of law. It is stated that the workmen are only piece rate worker and the Labour court equated an un-equated proposition.

5. Mr.P.S.Raman, learned Advocate General appearing for the appellant would submit that the Appellant is a Statutory Board and is governed by the 1959 Act and the Service Regulations framed thereunder (the Tamil Nadu Khadi and Village Industries Board Service Regulations, 1966). The provisions



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of the 1959 Act, read with its Service Regulations [Section 30(2)(a) read with Regulations 4, 6, 8, 16 and 17] provide for sanctioned posts within the Khadi Board. Pertinently, for the present case, it is admitted that there are no sanctioned posts relating to blacksmiths on the rolls of the Khadi Board, while such sanctioned posts do exist for carpenters. This is a crucial fact, as the absence of sanctioned posts for blacksmiths sets the present case on a different footing altogether from the case of carpenters whose permanency had been confirmed by this Court in W.P. No. 1160 of 2009, W.A. No. 758 of 2016 and Contempt Petition No. 554 of 2019, and by the Hon'ble Supreme Court in SLP (Civil) No. 28541 of 2018 ('Carpenters Cases').

6. The learned Advocate General would further submit that the 1st Respondent-workers union represents the interests of 10 workmen who have been working as blacksmiths at the Khadi Board on a temporary basis. These workmen raised an Industrial dispute and the reference was as to whether the workmen should be granted permanent status and the benefits given to permanent workmen should be paid to them. The Labour Court passed Award, directing the Appellant Khadi Board to grant permanent status to the 10 workmen and provide them with a scale of pay in line with carpenters



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employed in the Khadi Board.

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7. The learned Advocate General would further submit that W.P. No. 39320 of 2015 filed by the Appellant-Board against the Award of the Labour Court was dismissed by this Court stating that a Writ petition challenging a similar award in the case of carpenters in the Khadi Board had been dismissed and that the Writ Appeal and Special Leave Petition preferred had also been dismissed. The Learned Single Judge dismissed W.P. No 39320 of 2015 holding that the same was covered by the order in the Carpenters Cases on the misconception that the grounds agitated in the present case were the same as those agitated in the Carpenters Cases.

8. The learned Advocate General would submit that the workmen of the 1st respondent union are not entitled to regularisation. It is settled law that workmen are not entitled to regularisation when they have not been appointed against a sanctioned post and when their appointment has not been made in accordance with the Regulations governing the statutory entity. The statutory provision of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 ('1981 Act') and the judgement of



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the Hon'ble Supreme Court in Maharashtra State Road Transport Corporation

v. Casetribe Rajya Parivahan Karmchari Sanghatana, (2009) 8 SCC 556 are not applicable to the the case on hand.

9. The learned Advocate General would also submit that permanency can be ordered only in cases “where the posts on which the workmen have been working exist”. The principles of law laid down in (i) L. Justine v. Registrar of Co-operative Societies, Chennai and Ors., 2002 SCC OnLine Mad 698; (ii) The Management, Tirunelveli Co-operative Milk Producers’ Union v. P Pechimuthu and Ors., 2009 (6) CTC 311; (iii) A.Arunachalam v. TANGEDCO and Ors., W.P. No. 5976 of 2014] and the decision of Hon’ble Supreme Court in Umarani v. Registrar, Cooperative Societies and Ors., (2004) 7 SCC 112], clearly states that when no sanctioned post exists for that post, permanency cannot be ordered.

10. The learned Advocate General would contend that the Labour Court erred in fixing a pay scale and it exceeded the scope of its reference. There is no reference made to the Labour Court for assessing the nature and specifications of the work carried out by the 10 workmen or fixing a pay scale



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for them in line with a particular cadre of workmen in the Khadi Board. It is trite law that Labour Courts cannot travel beyond their terms of reference. It is clear that the nature and quantum of work performed by the workmen and what would be a comparable post and the scale of pay that they would be entitled to were not issues that were intended to be tried by the Labour Court and therefore did not form part of the reference.

11. The learned Advocate General would further contend that in the present case, in the case of blacksmiths, when no equivalent permanent post exists, a specific reference ought to have been framed as to what was the nature and quantum of work performed by these blacksmiths and what would be the appropriate scale of pay to adopt. The fixing of the scale of pay would come within the scope of issues that are “incidental” to the reference cannot be accepted, as the issue of pay is a completely separate issue to the issue of regularisation. Particularly when no equivalent permanent post exists and appropriate pay cannot be decided, without a specific enquiry being conducted into the nature of the work being carried out, requirement of the posts, etc., the issue of pay and work performed are independent issues that warrant a specific reference and adjudication thereupon. Thus, the issue of ascertaining a



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comparable permanent post or fixing a pay scale must be held to be beyond the scope of reference, and consequently the Labour Court lacked jurisdiction to adjudicate on the same.

12. In the present case, the only factor considered by the Labour Court before directing parity of pay scales with carpenters was that “they appear to be similarly qualified workmen.” There was no evidence adduced by the workmen to demonstrate similarity in nature of work, responsibilities associated with these posts or qualifications required for the same. In the absence of any material being adduced and a finding by the Labour Court that the blacksmiths were performing work of a similar nature and quantum to the carpenters in the same unit, such a direction by the Labour Court adopting the carpenters’s pay for the blacksmiths is thus clearly contrary to law and must be set aside.

13. The learned Advocate General would submit that if at all the Labour Court were to look into the issue of pay scales, it should have referred the dispute to an expert, such as the Labour Commissioner, who would be able to take into account the relevant factors. Any directions passed in the absence of such a reference cannot be sustained in law.



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14. The learned Advocate General would submit that the Pay Scale that is currently being paid to the respondent union workmen is without prejudice to the present appeal. The learned Advocate General would submit that the appellant-Board has scrupulously complied with the directions passed by Labour Court which have been confirmed by the learned Single Judge of this e Court, without prejudice to its right to challenge the same in the present proceedings. As far as G.O. Ms. No. 567 of 1992 is concerned, this relates only to the scales of pay of employees of the Public Works Department, not the Khadi Board. When a different scale of pay has been fixed for carpenters in the Khadi Board in accordance with the Pay Commission recommendations, the scale of pay is not uniform for a particular post across all government departments as the quantum of work, specific nature of work, qualifications required, etc. may vary significantly.

15. The recommendations of the 6th Pay Commission adopted by the State on 13.04.1998 through G.O. Ms. No. 162 of 1998 made a shift from post- wise allocation of pay, by reclassifying posts based on their earlier quantum of remuneration, into scales of pay that applied across industries. In accordance



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with this shift, posts that were previously earning between Rs. 720-945 such as the post of carpenter in the Khadi Board, were enhanced to Rs. 2550-3200. This amount was accordingly enhanced by the 7th Pay Commission in 2017 in line with its new Pay Matrix method of computation.

16. The distinction between ‘permanency’ and ‘regularisation’ has been detailed by the Hon’ble Supreme Court in Ram Naresh Rawat v. Ashwini Ray Ors., (2017) 3 SCC 436. In drawing the distinction between permanent employees and regular employees, the Hon’ble Supreme Court concluded that though a permanent employee may be entitled to receive pay on a graded pay scale, they would only be entitled to receive a minimum on this scale, with no increments. The Hon’ble Court further noted that only regularisation would entitle a party to further grants of increments, etc.

17. The learned Advocate General would submit that the Appellant-Board cannot be directed to create posts to regularise the 10 workmen. The finding of the Labour Court in its Award is clearly contrary to the law laid both by this Court and the Apex Court and that the 1981 Act does not grant permanency to a workmen when no sanctioned post exists. The Award of the



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Labour Court therefore warrants interference on this ground and the Impugned Order must be set aside.

18. Ms.R.Vaigai, learned counsel for the respondent Union would submit that Carpentry and Blacksmithy Unit worked together and produced wood-cum-steel furniture in the Khadi Board. The eight workmen of respondent union who worked in the Blacksmithy wing are skilled workers who worked as Welders and Painters, manufacturing steel furniture like tables, chairs and cupboards. They joined service between the year 1987 to 1992 and completed 480 days in 24 calendar months and have continuously worked since then.

19. I.D.No.489 of 2004 was raised by the Carpenters. The Labour Court, by Award dated 25.07.2008, directed the Khadi Board to confer permanent status “with all benefits”. The said Award was confirmed in W.P.No.1160 of 2009 by order dated 04.01.2016. W.A.No.758 of 2016 preferred by Khadi Board was dismissed on 24.07.2018. Khadi Board's Special Leave Petition in SLP.No.29541 of 2018 was dismissed on 16.11.2018. Since Khadi Board failed to implement the order, Carpenter filed Contempt Petition No.554 of 2019. On 17.10.2022, this court directed the Khadi Board to grant pay scale of last grade



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servant, to the carpenters. Carpenters have been designated as “Helper Grade -II, Carpentry”. The respondent union workers of the Blacksmithy wing raised a similar I.D.No.629 of 2003 in which a similar Award for permanency was granted on 05.03.2015 by the Additional Labour Court, Chennai.

20. The learned counsel would invite the attention of this court stating that the Reference to the Labour court in this case is identical to that of the carpenters. The terms of the Reference being identical, it is strange that the appellant-Khadi Board should question the benefit of permanency and regularization for the respondent workmen alone, when it has consistently lost identical questions raised in the case of the carpenters and finally granted permanency, appointed them as regular employees with regular pay scale, increments, Special Grade, Selection Grade, Government Provident Fund, Gratuity and Pension.

21. The learned counsel for the respondent union would also submit that the submission of the Advocate General that sanctioned posts were available in the case of carpenters is also false. The Labour court gave a finding that though the carpentry and blacksmithy unit are being run for 20 years on profit, yet no



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post has been created for the carpenters or blacksmiths. The Labour court further held that it is a fit case where new obligation is to be imposed by the tribunal requiring the respondent to confer permanency to the claimants/workmen by creating the posts. The grounds raised by the Khadi Board as against the award of the Labour court was dismissed by this court in W.A.758 of 2016 and the same was confirmed by the Supreme Court in the SLP.

22. The learned counsel would further contend that the appellant-Board's argument that the workmen are not entitled to regularization since they are not appointed as per the Board's Regulations and that the Tamil Nadu Industrial Establishments (Conferment of Permanency) Act, 1981 and granting permanency arise only if sanctioned posts exist, otherwise, it will completely defeat Section 3 of the Permanency Act, 1981.

23. The learned counsel also referred to decision of Division Bench of this court in the case of Khadi Carpenters judgment dated 24.07.2018 wherein it is held that Labour court can direct “regularization” because of the Tamil Nadu Industrial Establishments (Conferment of Permanency) Act, 1981 and the



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limitations imposed by Uma Devi judgment [2006 (4) SCC 1] does not apply.

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24. It is pointed out by the learned counsel for the respondent Union that the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 is a special Act enacted for the purpose of conferring permanent status to workmen in the State of Tamil Nadu. It is significant that this enactment received the assent of the President on 5th August 1981 and hence prevails over any other law on the subject.

25. The learned counsel also relied on decision in the case of R.Lakshmi Vs. TNEB [2012 SCC Online Mad 2941] and submit that on completion of 480 days, the workmen automatically attain permanency. This court in the said decision held that “even if no order of regularization was passed”, the statutory benefit of permanency has to be given. Thus the court held that the petitioner widow's deceased husband ought to be treated as permanent retrospectively and be given all the benefits of a permanent employee including retiral benefits and family pension and compassionate appointment.

26. The Division Bench judgment of this court in its order dated



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09.02.2024 in W.A.No.600 of 2020 *[Assistant Manager, ONGC Vs.*

D.Rajendran and another] has similarly directed regularization of two drivers who were continued to be employed for more than 15 years by creating posts.

27. The learned counsel would submit that the Tamil Nadu Industrial Establishment (Conferment of Permanent Status on Workmen) Act, 1981 states that the Act was promulgated to prevent exploitation of workers by continuing them for number of years without permanency, which resulted in gross injustice to the workers. The Act envisaged that once a worker completes 480 days, he becomes permanent, he should not be denied wages including increments and other allowances of a regular workman. The Labour court had granted a carpenter's pay scale for respondent workmen in the Blacksmithy wing. Carpenter and Blacksmith post are clubbed together in Annexure II of the Regulations as under:-

“Category C-2 “Carpentry and Blacksmithy

C:2 i) Development Officer (C&B)

vi) Helper Grade II (C&B)”

The learned counsel for the respondent Union would submit that Labour court cannot fix the pay scales based on the documents viz., Wage Registers,



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service registers, circulars fixing wage scales, circulars regarding entitlement of all other allowances including pension and gratuity for permanent workers engaged for steel/carpentry work or doing other skilled work in the appellant Bard's head office or other establishments.

28. The learned counsel would also submit that the Labour Court, in its Award, held that Khadi Board was depending on the skill of the respondent workmen to do its business for more than 10 years and yet it neither granted permanency nor extended benefits of labour legislations after extracting work, which is an unfair labour practice. The Tamil Nadu Industrial Establishments (Conferment of Permanency) Act, 1981 has an overriding provision in Sec.3 which begins with a non-obstante clause “Notwithstanding anything contained in any law for the time being in force”.

29. The learned counsel further submit that the entire salary for the permanent staff appointed for administration of the unit including the Assistant Director and the wages to the workers like claimants are borne only from the Income of the carpentry and blacksmith work of the unit. The Board circular shows 2096 profit margin. The entire unit is run out of the carpentry and



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blacksmith work done by the claimants like workmen. Yet the Board denied the workers the benefit of PF and ESI by calling them piece rate workers.

30. The learned counsel for the respondent Union would submit that the Board was withholding documents regarding wages paid to regular workers which was within its custody. Therefore, the Labour court had no option but to rely on EX.W.19-Pay slip of a permanent carpenter produced by the respondent workmen. In this regard, the learned counsel referred to the decision of the Honourable Supreme Court reported in (i) 2006 (1) SCC 106 [R.M.Yellatti] and (ii) 2015 (12)SCC 754 [Gauri Shankar] and submitted that it is held by the Supreme Court that adverse inference can be drawn by Labour courts when workmen called for records from the management and the same is not produced. In such view, the Labour court has held that the Board “shall pay the same monetary benefits as one paid to permanent workmen whose pay slips are marked as Ex.W.19 and who are similarly placed. Furthermore, the Board did not cross examine the workmen witness in this regard when Ex.W.19 was marked.

31. The learned counsel for the respondent union also contended that



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there cannot be any discrimination between the carpenters and blacksmith workers who work in the same unit, producing same furniture (wood/steel or wood-cum-steel), one working with wood and other working with steel. Workmen who have retired or died have not been given retired benefits of gratuity, GPF & pension/family pension, which ought to be paid with interest as per the rules. The learned counsel referred to judgment of the Supreme Court reported in Mahanadi Coalfields Ltd., Vs. Brajrajnagar Coal Mines Workers' Union [2024 SCC Online SC 270], wherein, it is held that when the nature of work is perennial in nature and there is no distinction between 2 sets of workers, denying regularization to 1 set of workers alone is wrong and unfair.

32. Heard both sides and perused the records carefully.

33. The learned Single Judge pointed out that the workmen were reinstated in service and working and the management was directed to pay Rs.5,00,000/- each to five workmen and to the legal heirs in respect of four workmen within four weeks from the date of receipt of a copy of the order and the balance amount of backwages was directed to be settled within a period of three months from the date of receipt of a copy of the order.



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34. As far as the argument of the learned Advocate General against the award and the order of learned Single Judge in granting permanent status to the 10 workmen and provide them with a scale of pay in line with carpenters employed in the Khadi Board, is concerned, the Labour court conferred them permanent status as they being regular employees and their engagement was for long years and the employees having rendered long years of service, the benefits they claimed equivalent to regular employees of their cadre, including wages and other benefits is admissible to such employees. The principle of 'equal pay for equal work' is applicable to the workmen here and therefore, we have no hesitation in concluding that the learned Single Judge is right in confirming the order of the Labour court. Further, we find that the order of the learned Single Judge in directing the Khadi Board to pay Rs.5,00,000/- to each workmen and to the legal heirs of the workmen is for the withheld regular salary amount to the workmen. This is the valuable right of the workmen and this court in order to exercise its appellate jurisdiction, ordered for payment for the delayed payment of salary and other benefits. Having regard to the facts and circumstances of the case, we do not feel that the same warrants any interference by us.



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35. The award of the Labour court has been upheld by this court in W.P.No.1160 of 2009 and W.A.No.758 of 2016 as well as the Hon'ble Supreme Court in SLP.No.28541 of 2018 dated 16.11.2018. The decision is binding on the appellant Board to the present case as the facts and issues are identical. Further we also find that there is no distinction between 2 sets of workers, and denying regularization to 1 set of workers alone is wrong and unfair.

36. In the result, the Writ Appeal is dismissed. The order passed by the learned Single Judge dated 15.11.2019 in W.P.No.39320 of 2015, is confirmed. The appellant Board shall pay the backwages and the amount as directed by the learned Single Judge forthwith, if not paid already. No costs.

Internet: Yes/No

(J.N.B.J.) (P.D.B.J)

22.10.2024

nvsri



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To

1.The Assistant Director
Management of Tamil Nadu Khadi & Village
Industries Board
No.11, Industrial Estate
Guindy, Chennai-32

2.The Presiding Officer
II Additional Labour Court
Chennai-600 104.



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**J.NISHA BANU ,J.
and
P.DHANABAL,J.**

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