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W.P.No.7084 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.09.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.7084 of 2019
and WMP.No.7796 of 2019

1. R.Suresh
 2. N.Nagarajan
 3. K.Thiyagarajan (deceased)
 4. K.Lalitha Bhuvaneswari
 5. T.Keerthika
- (P4 & P5 are substituted as LR's of deceased
3rd petitioner as per the order of this Court
dated 26.07.2024 in WMP.No.31549/2023
in WP.No.7084/2019.)

... Petitioners

Vs.

1. Airports Authority of India,
Rep. by its Regional Executive Director,
Southern Region,
Chennai Airport, Meenambakkam,
Chennai 600 027.
2. General Manager,
Airports Authority of India,
Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi 110 003.
3. Assistant General Manager (HR),



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Human Resource Management Department,
Airports Authority of India,
Chennai Airport, Meenambakkam,
Chennai 600 027.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of declaration, declaring that the order of the 2nd respondent dated 30.07.2012 bearing No.A60011/45/2010-PP and the consequential office orders of the 3rd respondent dated 20/23.12.2013 withdrawing the two additional increment at the rate of 3% of the basic pay in respect of the petitioners as illegal, arbitrary and contrary to law and consequently direct the respondents to pay the salary to the petitioners as fixed on 21.01.2011 by continuing to pay the two additional increment at the rate of 3% of the basic pay and not effecting any recovery.

For Petitioner : M/s.Selvi George

For Respondents : Mr.S.Venkatesan

ORDER

This Writ Petition has been filed challenging the orders passed by the second respondent dated 30.07.2012 and the consequential orders of the third respondent dated 20/23.12.2013, thereby withdrawing the two additional increment at the rate of 3% of the basic pay in respect of the petitioners.



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2. Pending writ petition, the third petitioner died and his legal heirs were substituted as petitioners 4 & 5 herein.

3. Heard the learned counsel for the petitioners and the learned counsel for the respondents and perused the materials available on record.

4. All the petitioners are working as Supervisors in the Fire Service Wing at Airports Authority of India, Meenambakkam, Chennai. The petitioners had joined the service in the year 2002 as Junior Assistants. Later, they were promoted as Senior Assistants and those who rendered two years as Senior Assistant, were placed as Supervisors. In the year 1979, the respondents introduced Crash Fire Tenders, which is used for dousing fire. They are imported vehicles and it requires high skill to operate the said vehicles. The crew of the vehicle were entrusted with greater responsibilities. The vehicles are used in all International Airports throughout the world and its maintenance is also very expensive. Therefore, the said work was entrusted only to qualified Senior Assistants/Supervisors, in addition to their regular work.



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5. The respondents issued order that those who are entrusted with the said job, will be paid two additional increments in their scale of pay and the same will be merged with the basic pay. All the petitioners were given additional duty to drive the said vehicles and the petitioners were given two additional increments on 07.05.2010. Therefore, the scale of pay fell in two levels viz., NE-6: 6300-180-8460-200-12069 and NE-7:6500-200-8900-220-12860. Accordingly, they were granted increment of 180, as two additional increments and the same was merged in their basic pay.

6. While being so, the respondents revised the scale of pay by entering into a settlement dated 21.01.2011 and the benefits were conferred with effect from 01.01.2007. As per the settlement, the Senior Assistant/Supervisor were fixed in NE-6 and NE-7 as follows:-

“ NE-6 14500-33500

NE-7 15000-35500”

7. The said pay band did not provide for increment. Whereas, Clause 3.1 of the settlement dated 21.01.2011 provides for increment. Accordingly, the rate of annual increment will be 3% of revised Basic Pay and will be



rounded off to the next multiple of 10 rupees, with effect from 01.04.2010.

Accordingly, the petitioners were granted two additional increments which is 3% of their revised basic salary. It was given with effect from 07.05.2010.

It is sought to be taken away without notice, without hearing and recovery is also sought to be effected on the ground that excess payment has been made.

The second respondent issued an order dated 30.07.2012, thereby directing to withdraw the two additional increment of 3% basic pay and instead given two increments at the rate of Rs.180/-. However, it was not implemented so far. The third respondent issued office order dated 20/23.12.2013 to the petitioners, thereby fixing pay and withdrawal of two additional increment at the rate of 3% of the basic pay and by granting two additional increment of Rs.180/- in respect of the petitioners. It was also not given effect to. However, the third respondent issued further order dated 20/23.12.2013, thereby fixing pay for the petitioners once again. Accordingly, they decided to withdraw the two additional increments which was given at the rate of 3% of the basic pay and effect recovery.

8. The learned counsel for the petitioners would submit that as per



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the settlement dated 21.01.2011, the respondents are bound to pay two additional increments to all the Senior Assistant/Supervisors who are entrusted with the job of driving the Fire Tender Vehicles. Therefore, the withdrawal of two increments and recovery would nullify the settlement. The order of withdrawal passed only in the case of Senior Assistant/Supervisor, who got the same after 01.01.2007 and in respect of Personnel who got it before 01.01.2007 no order has been passed to withdraw the increment. Therefore, those personnel doing the same job, cannot be treated differently without any legal basis. The discrimination is in violation of Article 14 of Constitution of India.

9. In fact, the said increments were granted to the petitioners not on any false representation or false claim by the petitioners. It was granted in lieu of the settlement, that too with effect from 07.05.2010. It was granted taking into account the additional work of handling the Crash Fire Tenders which required high skill and experience. It would amount to change in service condition. The respondents failed to issue any notice and failed to conduct any enquiry. It is also in violation of provisions under Section 9A of the Industrial Disputes Act. Therefore, the order of withdrawal of increment



is void ab initio. The respondents 2 and 3 being paid Officers, cannot go beyond the settlement arrived at under Section 18(1) of the Industrial Disputes Act to order for withdrawal of two additional increments.

10. The respondents filed counter and Mr.S.Venkatesan, learned counsel for the respondents submitted that though the two additional increments at 3% totalling to 6% of Basic Pay were granted to the petitioners for driving Crash Fire Tender on or before 01.01.2007 to Fire Personnel in NE-6 level in the revised scale of pay, as per the circular dated 20.07.2011, it has been revised and it was granted at Rs.180/- each, in the pre-revised scale of pay. Accordingly, their pay has been re-fixed and there was reduction of existing Basic Pay and it also leads to recovery of over payment. However, all those who have been granted increments were eligible to draw their increment on or after 01.01.2007. The new crew in-charge on the Crash Fire Tender driving would be Superintendent (FS)/Senior Assistant and not Senior Assistant (FS). The necessary number of posts for Superintendent/Senior Superintendent (FS) have already been created and not filled at the Airports. Therefore, in the intervening period, the Senior Assistant (FS) who takes on the wheels, would continue to get



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increment. They have been taken due to the fact that there was a shortage of staff, consequent upon creation of vacancies at the level of Superintendent (FS)/Senior Assistant (FS). On clarification, two additional increments may be granted in the pre-revised scale of pay to the employers of Fire Staff who are eligible for driving Crash Fire Tender on or after 01.01.2007. Accordingly, their pay scale was revised. In fact, the Fire Personnel who were recruited before 01.01.2007, but have been promoted/being promoted to NE-6 on or after 01.01.2007 shall also be eligible for two increments at Rs.180/- each from the date of their promotion to NE-6, provided they are in possession of HMTV license and drive Crash Fire Tenders for 12 hours in a week. The additional increments in their case shall also get merged in the event of their further promotion / placement to higher grade with pay fixation or pay revision.

11. He further submitted that even as per the settlement dated 21.01.2011, it does not speak about the two additional increments. It emphasizes that issues arising out of implementation of the said settlement which may require interpretation/clarification to be referred to the CHQ for decisions. As per clarification dated 20.07.2011, the two additional



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increments may be granted in the pre-revised scale of pay who are eligible for driving Crash Fire Tender on or after 01.01.2007. However, the counter or submission made by the learned Senior Counsel for the respondents 2 and 3 does not whisper about the compliance of the provisions under Section 9(A) of Industrial Disputes Act.

12. It is relevant to extract the provisions under Section 9(A) of Industrial Disputes Act, 1947 as follows:~

“9A. Notice of change.-No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,?

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty~one days of giving such notice:

Provided that no notice shall be required for effecting any such change?

(a) where the change is effected in pursuance of any 2 [settlement or award]; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control



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and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.”

13. Thus, it is clear that any change in the conditions of service is also applicable to the workman. Accordingly, it requires 21 days notice. Admittedly, the petitioners were not served with any notice as contemplated under Section 9(A) of the Industrial Disputes Act, before passing the impugned orders. All along the counter reveals that on receipt of clarification circular dated 20.07.2011, two additional increments on 3% of Basic Pay had been revised.

14. In respect of notice, the learned counsel for the petitioners relied upon the Judgment of the Hon'ble Supreme Court of India reported in 1999 6 SCC 275 in the case of ***Lokmat Newspapers Pvt. Ltd Vs Shankarprasad***, wherein it was held as follows:-

“It may also be noted at this stage that by two decisions rendered by Bench of three learned Judges of this Court in connection with the time for issuance of notice under Section 9-A read with item 10 Schedule IV with which we are concerned



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in the present case it has been clearly ruled that such notice must precede the introduction of rationalisation scheme. We may usefully refer to them at this stage. In the case of M/s. North Brook Jute Co. Ltd. & Anr. vs. Their Workmen (1960 (3) S.C.R. 364), a three Judge Bench of this Court had to consider the question whether in a reference regarding proposed introduction of rationalisation scheme which was preceded by notice under Section 9-A of the I.D. Act, such a scheme could be actually introduced pending reference proceedings and whether such an act on the part of the management could be treated to be illegal entitling the workmen affected by such an introduction to go on strike and still earn wages for the strike period. Answering this question in affirmative it was held by this Court that after notice under Section 9-A of the I.D. Act when a scheme of rationalisation was said to be introduced but was not actually introduced it could not be introduced till the dispute regarding such proposed introduction was resolved by the competent Court. Dealing with the scheme of proposed rationalisation as envisaged by item no.10 of Schedule IV of the I.D. Act it was observed that :

“Rationalisation which was introduced had therefore two effects~ first that some workers would become surplus and would face discharge; and secondly, the other workmen would have to carry more workload. The introduction of the rationalisation scheme was therefore clearly an alteration of conditions of service to the prejudice of the workmen. The



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alteration was made on the 16th December, when reference as regards the scheme had already been made and was pending before the Industrial Tribunal. The Tribunal has therefore rightly held that this introduction was a contravention of Section 33.””

15. In the case on hand, the withdrawal of two additional increments would amount to change in service condition. Therefore, it clearly attracts the provisions under Section 9(A) of the Industrial Disputes Act. Hence, the above Judgment is squarely applicable to the case on hand.

16. Further, the respondents cannot arbitrarily take away two increments which had been granted at the rate of 3% of the Basic Pay from 01.01.2007. Therefore, withdrawal of two increments without issuing any notice and without assigning any reasons is arbitrary and violation of Articles 14 and 16 of Constitution of India.

17. As per the settlement dated 21.01.2011, the management and the Union had entered into a settlement and accordingly, the benefits of two additional increments were conferred with effect from 01.01.2007. Accordingly, they were given two additional increments which is 3% of their revised Basic Pay. The similar matter was dealt with by the Hon'ble



High Court of Kerala at Ernakulam in WP.(C).No.5604 of 2012 (A), in the case of ***Roby Baby and others Vs International Airport Authority of India***, represented by Chairman, Headquarters, Yashwant Palace, Chanakya Puri, New Delhi~110021 and others, wherein it was held as follows:-

“20. In the present case, admittedly the scheme of granting additional increments to persons like petitioners is continuing since the year 1979. That means all those beneficiaries continue to enjoy the same without any loss since it merged with their basic pay, which gets revised in tune with the revision of pay from time to time, as can be seen from Exts.P13, P14, etc. As pointed out by the petitioners the reason for Ext.P5 clarification appears to be the introduction of change in mode of calculation of increment from fixed amount in the pay scale to 3% of revised basic pay.

21. In the light of the concept of increment as enunciated by the Apex court in the aforesaid three judgments and in view of the words and expressions employed in Ext P1, which continue to be in force, I am of the view that the grant of additional increments should only be at the rate shown in the scale of pay attached to the post the employee is holding from time to time and the same has to be calculated in the very same manner in which the increment in the respective pay scale is to be calculated at the relevant time.

22. The fact that all other employees in other Airport



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authorities were granted increments in the pre-revised scale or that they do not have any complaint on the matter or even the fact that the 22nd petitioner submitted an application to defer the recovery would not stand in the way of the petitioners from challenging the orders revising the fixation of pay or in determining the claim raised by them in the writ petition.”

18. In the case on hand, admittedly, the petitioners were entrusted with the job of driving Crash Fire Tender vehicles. Therefore, the respondents have paid and settlement was implemented with effect from the date that they were entrusted with the job of driving Crash Fire Tender vehicles.

19. In view of the above, the impugned orders cannot be sustained and are liable to be quashed. Accordingly, the order of the second respondent dated 30.07.2012 bearing No.A60011/45/2010-PP and the consequential office orders of the third respondent dated 20/23.12.2013 are hereby quashed. The respondents are directed to continue to pay the salary to the petitioners as fixed by the settlement dated 21.01.2011 by paying two additional increments at the rate of 3% of their Basic Pay.

20. In the result, this writ petition stands allowed.



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There shall be no order as to costs.

Consequently, connected miscellaneous petition is closed.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

1. Airports Authority of India,
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Southern Region,
Chennai Airport, Meenambakkam,
Chennai 600 027.
2. General Manager,
Airports Authority of India,
Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi 110 003.
3. Assistant General Manager (HR),
Human Resource Management Department,
Airports Authority of India,
Chennai Airport, Meenambakkam,
Chennai 600 027.



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BATTU DEVANAND.J.,
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