



W.A.(MD)No.852 of 2015

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
03.01.2024	09.01.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

**W.A.(MD)No.852 of 2015
and
M.P.(MD)No.1 of 2015**

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Industries Department,
Fort St. George,
Chennai – 600 009.

2.Tamil Nadu Salt Corporation Limited,
Rep. by its Chairman and Managing Director,
LLA Building, IV Floor,
735, Anna Salai,
Chennai – 600 002.

... Appellants

vs.

K.Vijayakumar

... Respondent

PRAYER : Writ Appeal filed under Clause 15 of the Letters of Patent, against the order dated 18.12.2014, made in W.P.(MD)No.8869 of 2007.

1/11



W.A.(MD)No.852 of 2015

WEB COPY

For Appellants

: Mr.S.Shaji Bino
Standing Counsel

For Respondent

: Mr.T.Sakthikumaran
for M/s.Victory Associates

JUDGMENT

**DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.**

The intra-court appeal is preferred by the State, being aggrieved by the order passed by the learned Single Judge, dated 18.12.2014, directing the appellants/respondents to give effect to the respondent's/writ petitioner's promotion as Technical Officer in the pay scale of Rs.2200-75-2800-100-4000 with effect from 25.07.1992.

2. The respondent/writ petitioner was appointed as Junior Assistant in the Tamil Nadu Salt Corporation Limited on 21.09.1975. His probation was declared on 20.09.1977 with the pay scale of Rs.210-5-245-10-325. He was subsequently promoted as Production Supervisor on 27.06.1981 in the pay scale of Rs.400-15-490-20-650-25-700. Subsequently, he was promoted as Technical Officer Grade – II, by order dated 11.06.1986 with the pay scale of

2/11



W.A.(MD)No.852 of 2015

WEB COPY Rs.1160-50-1460-70-1950. Thereafter, on 01.09.1989, the respondent/writ petitioner was upgraded as Technical Officer with higher pay scale of Rs.1340-75-1715-90-2435. As per Board's resolution, the upgradation of the respondent/writ petitioner is to be given with effect from 01.09.1989. However, after implementation of the fifth pay commission's recommendation, it was found that the upgradation subsequent to 01.06.1988 with higher pay scale to be reversed and accordingly, by proceedings dated 15.11.1990, following G.O. (Ms)No.1222, Industries (SIF.1) Department, dated 07.11.1990, the pay scale of Technical Officer Grade – II was fixed at Rs.1640-60-2600-75-2900 and the respondent/writ petitioner was reverted to the post of Technical Officer Grade – II.

3. The respondent/writ petitioner challenged the order of reversion in W.P.No.4633 of 1993, but later withdrawn, hence, the Writ Petition was dismissed on 31.10.1996. After five years of service as Technical Officer Grade – II, the respondent/writ petition was placed under selection grade pay scale of Rs. 2000-60-2300-75-3200. Then, he was promoted as Technical Officer Grade – I with revised pay scale of Rs.8000-275-13500 [Pre-revised pay scale of Rs.2200-75-2800-100-4000].

3/11



W.A.(MD)No.852 of 2015

WEB COPY

4. Pursuant to a Board's resolution, post of Technical Officer Grade – I was redesignated as Deputy Project Manager on 04.05.1999. The respondent/writ petitioner was placed under selection grade Deputy Project Manager on 22.01.2007 with the pay scale of Rs.9100-275-14050. According to the respondent/writ petitioner, soon after completion of his probation, he was posted as Production Supervisor on 22.06.1983 and his next promotional avenue was Technical Officer. Whereas, the same was converted into Technical Officer Grade - I and Technical Officer Grade – II and he was placed as Technical Officer Grade – II, by order dated 19.06.1986. In addition to his function as Technical Officer Grade – II, he was placed with responsibility of the post of Production Supervisor and the said post of Technical Officer Grade – II was upgraded with pay scale of Rs.1340-75-1715-90-2435, which is applicable to the post of Technical Officer with effect from 01.11.1990. He assumed charge as Works Manager-in-charge of Sardar Vedarathnam Salt Project, Thambikottai. When the fifth pay commission recommendation came to be implemented, his upgradation from the post of Technical Officer Grade – II to the post of Technical Officer was reversed and he was placed under lesser pay scale. Since there was anomaly in fixation of his pay subsequent to the upgradation and reversion, he made a representation to fix his



W.A.(MD)No.852 of 2015

WEB COPY

pay scale at Rs.2200/- with effect from 01.01.1990 and to protect his seniority and give promotion in the Manager cadre on par with his juniors.

5. According to the respondent/writ petitioner, for no fault of his the upgradation made in the year 1989 was soon reverted citing the fifth pay commission's recommendation. However, if he had been allowed to continue in the post of Technical Officer Grade – II even after the fifth pay commission's recommendation without reversion, he would have completed 10 years of service much earlier for being considered to the next promotional post of Manager, carrying the pay scale of Rs.10000/-. The delay and reversion of upgradation, has deprived his opportunity to become a Manager with higher monetary benefits and he had retired from service on 31.12.2007 as Deputy Manager. The learned Single Judge, who heard the Writ Petition, being convinced by the submissions made, allowed the Writ Petition to the extent stated above.

6. In the intra-court appeal, the State contended that with the very same grievance, the respondent/writ petitioner approached this Court earlier and the same was declined. The employees, by name, L.Gnanasambandam,



W.A.(MD)No.852 of 2015

WEB COPY

M.Arunachalam and P.Sridharan were not juniors to the respondent/writ petitioner in the same cadre pay scale. They were under the different pay scale and cadre and therefore, the length of service between the respondent/writ petitioner and those who had been promoted to the post of Manager, cannot be taken into consideration. The Writ Petition filed after retirement, challenging the reversion and the order dated 03.05.2007, declining the representation, seeking promotion, is not maintainable and sustainable.

7. Per contra, in response to the learned Standing Counsel for the appellants' argument, the learned counsel appearing for the respondent/writ petitioner submitted that the respondent/writ petitioner was appointed on 21.09.1975 as Junior Assistant. After serving as Technical Officer Grade – II from 30.05.1985, his post was upgraded as Technical Officer with higher pay scale on 01.09.1989. However, it was reverted and his position as Technical Officer was restored only on 10.01.1997. Meanwhile, before he could enter into Manager cadre, one M.Arunachalam, who joined as Junior Assistant after 9 ½ months *i.e.*, on 07.07.1976, got promoted as Deputy Manager on 06.01.1993 and further promoted as Manager (Finance) on 02.03.2004 and another employee by



W.A.(MD)No.852 of 2015

WEB COPY name, P.Sridharan also promoted as Deputy Manager Commercial on 19.07.1993 and further promoted as Manager (Marketing) on 02.03.2004.

8. We have considered the rival submissions. At the outset, it is to be pointed out that the other Staff with whom the respondent/writ petitioner compares, does not fall within the same cadre. While the respondent/writ petitioner was on the production Section, the said M.Arunachalam and P.Sridharan were on the Accounts and Sales Sections, respectively. Their line of promotion and pay scale were not identical with that of the respondent/writ petitioner. There cannot be equality among unequals. The learned Judge has miserably failed to take note of these differences and this was not properly canvassed by the learned Standing Counsel appearing for the State before the learned Judge.

9. The proceedings of upgradation and subsequent reversion had not caused any prejudice to the respondent/writ petitioner and the same could be seen from the order of the Managing Director, Tamil Nadu Salt Corporation Limited, dated 15.11.1990 and the proceedings of the Managing Director even dated. Based on



W.A.(MD)No.852 of 2015

WEB COURT

the fifth pay commission's recommendation, though the upgradation was revoked, the pay scale has been retained at Rs.1640-60-2600-75-2900, as it has been fixed while the post was upgraded. To avoid unpleasant result, the Management had thought fit there shall not be any recovery action. So, literally, it was only reversion to the post of Technical Officer Grade – II, but the monetary benefit conferred during the upgradation was not reversed.

10. While so, the contention of the respondent/writ petitioner that he had been deprived of his seniority or benefit of length of service, is totally incorrect. It is also pertinent to note that in this regard, the respondent/writ petitioner already approached the Principal Seat of this Court by filing W.P.No.4633 of 1993 and withdrawn that Writ Petition. Even otherwise, his contention that the reversion has deprived his prospect of entering into managerial cadre also appears to be far fetching and untenable. When a proposal by the Board for upgrading the senior level Deputy Manager as Manager in the pay scale of Rs.10000-325-15200 per month was mooted by the Board, advancing the promotion of the respondent/writ petitioner in the post of Technical Officer Grade – I with effect from 25.07.1992 and promoting him as Deputy Manager in the pay scale of



W.A.(MD)No.852 of 2015

WEB CTS Rs.8000-13500 p.m. and to the post of Manager in the pay scale of Rs.10000-15200 p.m. with effect from 31.03.2004, it was rightly declined by the Government, vide communication dated 08.11.2004, stating that the proposals are not in tune with the general policy guidelines issued in the Government letter in Lr.No.42228/BPE/03, Finance Department, dated 15.09.2003 and the Government, hence, not accepted that proposal.

11. The reason for the proposal in favour of the respondent/writ petitioner and the rejection order of the Government, show that while the fifth pay commission had set out the cadres in the *inter se* Department in the existing pay scale and proposed revision pursuant to the fifth pay commission, there is only a cadre of Technical Officer Grade – II and the next higher post is Deputy Project Manager. While the Technical Officer Grade – II pay scale was revised from Rs.1160-50-1460-70-1950 to Rs.1640-60-2600-75-2900 for the immediate promotional post *i.e.*, Deputy Project Manager, the revised pay scale fixed as Rs.2200-75-2800-100-4000 and Administrative Officer-cum-Accounts Officers, Assistant Executive Engineer (Civil) and Accounts Officers also with the same identical pay scales. The individuals, who fall under the other cadre posts with identical pay scale, cannot be treated equal for further promotion, just because,



W.A.(MD)No.852 of 2015

WEB COPY

they fall under the same pay scale. While the Board had erroneously proposed for upgradation of the post held by the respondent/writ petitioner with higher pay scale, the Government has rightly declined the same, citing that there is no provision under the service rule governing employees of Salt Corporation for upgrading the post. While the order of the Government is very clear and in accordance with law, the proposal of the Board contrary to law, cannot be considered in violation of law.

12. Thus, the learned Judge had erred in accepting the illegal proposal of upgradation. Therefore, this Court holds that the resolution by the Board *per se* will not confer any right to the respondent/writ petitioner, seeking upgradation or higher pay scale particularly, when the Board's resolution is not inconsonance with the Rule.

13. Hence, the order of the learned Single Judge, dated 18.12.2014, made in W.P.(MD)No.8869 of 2007, is set aside and the Writ Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes
NCC : Yes / No

[G.J., J.] [C.K., J.]
09.01.2024

10/11



WEB COPY



W.A.(MD)No.852 of 2015

DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

smn2

PRE-DELIVERY JUDGMENT MADE IN
W.A.(MD)No.852 of 2015

09.01.2024

11/11