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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
31.07.2024	06.12.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.9073 and 9074 of 2016

W.P.(MD)No.9073 of 2016

1.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Salai,
Chepauk,
Chennai – 600 005.

2.The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
Maintenance Division, Ganesh Nagar,
(Opp to Mattuthavani),
Madurai – 625 007.

... Petitioners

Vs

1.The Presiding Officer,
The Labour Court,
Madurai.

2.A.Bhagaathi Paramasivam

3.R.Alagarraja

4.A.Velmurugan



5.M.Pitchaimani

6.R.Prabukumar

7.D.Gurusamy

8.N.Ravichandran

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order passed by the first respondent in C.P.No.36/2014 to C.P.No.42/2014 dated 28.01.2016 and quash the same.

W.P.(MD)No.9074 of 2016

1.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Salai,
Chepauk,
Chennai – 600 005.

2.The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
Maintenance Division,
28, K.Central Plaza Building,
SalaiTheru,
Ramanathapuram.

... Petitioners

Vs

1.The Presiding Officer,
The Labour Court,
Madurai.



2.P.Manikandan

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3.S.Thirumurugan

4.B.Mathanprasath

5.M.Sathishkumar

6.K.Pandian

7.N.Balavijayakumar

8.S.Ayyathevan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order passed by the first respondent in C.P.No.43/2014 to C.P.No.49/2014 dated 28.01.2016 and quash the same.

(In both Writ Petitions)

For Petitioners : Mr.Veera Kathiravan,
Additional Advocate General,
Assisted by,
Mr.B.Vijay Karthikeyan

For R-1 : Labour Court.

For R-2 to R-8 : Mr.Balan Haridass,
for M/s.G.P.Arivu Chudar,
for M/s. Law Square.



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COMMON ORDER

Both the writ petitions had raised common issues and hence both the writ petitions are taken together and common order is passed.

2.(i) The Writ Petition in W.P.(MD)No.9073 of 2016 has been filed by Tamil Nadu Water Supply and Drainage Board to quash the impugned order dated 28.01.2016 passed by the first respondent in C.P.No.36/2014 to C.P.No.42/2014.

2.(ii) The Writ Petition in W.P.(MD)No.9073 of 2016 has been filed by Tamil Nadu Water Supply and Drainage Board to quash the impugned order dated 28.01.2016 passed by the first respondent in C.P.No.43/2014 to C.P.No.49/2014.

3.(i) The respondents 2 to 8 had approached the first respondent Labour Court by filing a petition under Section 33C (2) of the Industrial Disputes Act, claiming arrears of salary and allowances from the writ petitioner TWAD Board. The respondents in W.P.(MD)No.9073 of 2016 had filed the claim petitions and the details are as follows:



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S. No.	Name and respondent	C.P. Number	Amount in rupees
1	2 nd respondent A.Bhagvathi Paramasivam	C.P.No. 36/2014	15,10,962/-
2	3 rd respondent R.Alagarraja	C.P.No. 37/2014	21,23,815/-
3	4 th respondent A.Velmurugan	C.P.No. 38/2014	12,60,773/-
4	5 th respondent M.Pitchaimani	C.P.No. 39/2014	15,09,734/-
5	6 th respondent R.Prabukumar	C.P.No. 40/2014	12,39,542/-
6	7 th respondent D.Gurusamy	C.P.No. 41/2014	15,09,962/-
7	8 th respondent N.Ravichandran	C.P.No. 42/2014	15,09,734/-
Total			1,06,64,522/-
			-

3.(ii). The respondents in W.P.(MD)No.9074 of 2016 had filed the claim petitions and the details are as follows:

S. No.	Name and respondent	C.P. Number	Amount in rupees
1	2 nd respondent P.Manikandan	C.P.No. 43/2014	19,12,711/-
2	3 rd respondent S.Thirumurugan	C.P.No. 44/2014	20,66,529/-
3	4 th respondent B.Mathanprasath	C.P.No. 45/2014	19,86,514/-
4	5 th respondent M.Sathiskumar	C.P.No. 46/2014	20,18,072/-



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5	6 th respondent K.Pandian	C.P.No. 47/2014	20,18,724/-
6	7 th respondent N.Balavijayakumar	C.P.No. 48/2014	17,94,084/-
7	8 th respondent S.Ayyathevan	C.P.No. 49/2014	20,38,251/-
Total			1,38,34,885/-

4. The first respondent after considering the claim petitions had passed impugned common order dated 28.01.2016 directing the petitioners Board to pay the pending wages totally to the tune of Rs.2,44,99,407/- (1,06,65,522/- + 1,38,34,885/-) within a period of three (3) months from the date of receipt of a copy of the order, which is challenged in the present writ petition.

5. The brief facts as stated in the affidavit are that the TWAD Board is mainly engaged with the work of providing water supply to the people and also for providing drainage schemes to maintain the clean environment. The TWAD Board was created with its staff strength. The Board has its own Rules and Regulations for its employees with educational qualifications for the various posts. The appointment of its employees ought to be endorsed by the Standing Committee. The TWAD Board ought to follow certain procedure to recruit people to Board service wherein the Board refer the vacancy of posts to the local



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Employment Exchange and ought to issue paper publications widely calling for applications, then selection process would be followed by adhering to the rules of reservation. In the matter where the urgency is warranted in execution of specific works, the Board will enter into contract with the contractor in order to execute the said work and accordingly, the Board has entrusted the maintenance work to the contractors in several places. The contractor would employ the contract labourers in order to execute the works as per the needs and the said labourers would be engaged without following any norms for appointment like educational qualification, reservation etc. Further the Board had initiated the work of “combined water schemes” all over Tamil Nadu except Corporations. In Panchayat, the Board would complete the project and hand it over to the local Panchayat for further maintenance. Likewise, the work of water scheme for the “Theni Water Supply Scheme” was handed over to the contractor and the said contractor had employed the labourers who are the respondents 2 to 8 in both the writ petitions. The respondents had approached the Inspector of Labour, seeking conferment of permanent status on completion of 480 days of contract work and the Inspector of Labour had passed an award vide its order dated 29.11.2002, directing the TWAD Board authorities to issue orders conferring the permanent status to the respondents, but without mentioning about backwages and other



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monetary benefits. Challenging the said order, the TWAD Board had filed Writ Petition in W.P.No.4675/2004 and the Labourers had filed W.P.No.3809/2004 and a common order was passed vide order dated 09.02.2012, wherein, the Writ Petition filed by the TWAD Board was dismissed and the Writ Petition filed by the Labourers was allowed. The TWAD Board filed Writ Appeal in W.A.No. 1644/2012 and W.A.No.1981/2012 and both appeals were dismissed vide order dated 24.08.2012 and 08.10.2012 respectively. The Board had filed two Special Leave Petitions (Civil) in Nos.35106/2012 and 35107/2012 before the Hon'ble Supreme court and the same were dismissed on 07.05.2013. Thereafter, the TWAD Board has passed an order of regularization vide proceedings dated 19.06.2013. After the date of regularization, the respondents had fixed the salary and grade pay as applicable to the post as per the Service Rules of TWAD Board and the respondents are receiving the said salary from 01.03.2014. The respondents had filed the aforesaid claims petitions praying to compute the alleged monetary benefits statutorily accrued towards the arrears of pay and allowances and arrears of bonus after deducting the wages which were already paid to the respondents for the period from 25.07.1994 to 28.03.2014 from the TWAD Board as furnished in the statement enclosed along with the petition (as tabulated above) under section 33C(2) of the Industrial Disputes Act, 1947. The



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said claim petition was allowed vide the impugned order, aggrieved over the present writ petition is filed by the TWAD Board.

6. Heard Mr.Veera Kathiravan, the Learned Additional Advocate General assisted by Mr.B.Vijay Karthikeyan appearing for the writ petitioner TWAD Board and Mr.Balan Haridass, the Learned Counsel appearing for M/s.G.P.Arivu Chudar for M/s. Law Square for the respondents 2 to 8 in both the writ petitions and perused the records.

7. The contention of the Board is that the respondents were not appointed by the Board but were appointed by the contractor and they were working under the contractors and receiving salary till 2013 from the contractor i.e. till the date of their regularization vide proceedings dated 19.06.2013 and regularized on 20.06.2013 and 21.06.2013. Hence it is incumbent on the respondents to prove the actual salary received by them from the contractor, but the respondents had not filed any evidence / documents to prove the same. Further the respondents service records are not available with the Board. As per the order of Supreme Court in S.L.P.No.35106/2012 and S.L.P.No.35107/2012 dated 05.07.2013, the service of the 17 labourers including the respondents herein were confirmed by the Board as



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ordered by the Inspector of labourers. And the labourers had never raised the claim of back wages throughout their entire legal battle and no specific order was passed by any Court in this regard. Though the services of the respondents were regularized from the alleged date of completion of 480 days, the respondents did not reserve any right to claim the other benefits of regularization which are now being claimed, hence the respondents are now estopped from claiming the same. It is only because of the order of the Inspector of Labour, which has been confirmed by the orders of the High Court and Supreme Court, that the respondent's services were regularized in a subsequent date.

8. The respondents vehemently denied the contention of the TWAD Board and submitted they were employed by the contractors only, but the said contractors are pseudo persons and the real employer is only TWAD Board. Also submitted neither the said pseudo persons nor the TWAD Board had registered themselves and obtained license under the Contract Labour (Regulation and Abolition) Act, 1970. Further the said issue was raised in the earlier litigation when the plea of the respondents was heard under the Conferment of Permanent Status Act and hence the same cannot be raised at the stage of claim petition. The respondents also submitted that once the conferment of permanent status is



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granted, then the labourers are entitled to consequential relief of salary which the regular employee is drawing in the TWAD Board and a separate plea is not necessary.

9. After hearing the submissions this Court proceeds to consider the rival pleas. The respondents herein had filed petition for conferment of permanent status and the Inspector of Labour had granted the conferment, which is confirmed in writ petition, writ appeal and by Hon'ble Supreme Court. However, the Hon'ble Supreme Court had held that the question of law is left open. Therefore, plea of TWAD Board and respondents ought to be considered irrespective of the earlier orders. Further the present issues raised by the parties ought to be considered independently.

10. It is seen that the while granting conferment of permanent status the Inspector of Labour had stated that the respondents herein had produced evidence to prove their case, but none of the documents were marked. Infact the Inspector of Labour had not mentioned any document either in the order or in the list of documents. Even though this observation is made, this Court is not going into the merits of the order which has been confirmed by the Hon'ble Supreme Court. But



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as held supra the claim of monetary benefits would be considered independently.

11. It is seen from the petition filed for conferment permanent status and the petition seeking monetary claim that the respondents were employed by the contractor on consolidated wages of Rs.1000/-. It is pertinent to mention that the TWAD Board had disclosed the name of the contractors and they are as A.Deivandran, Sadagopan, A.Sundarrajan and Savarimuthu. In such circumstances, the contention of the TWAD Board cannot be disbelieved.

12. After conferment, the Board had placed the proposal before the Board Meeting and it was resolved through Resolution No.5 and 8 dated 06.06.2013 to implement the orders of Inspector of Labour which was confirmed by Hon'ble Supreme Court. Thereafter the TWAD Board had issued independent appointment orders dated 20.06.2013 and 21.06.2013 and posted the respondents as Electrician and Maintenance Assistant. In the appointment order the scale of pay was fixed as Rs.3050-4590 and the same is payable from the date of appointment. The respondents had accepted the same without any protest and joined the duty. And the TWAD Board is paying the same from the date of



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appointment order dated 20.06.2013 and 21.06.2013.

13. Now the dispute between the Board and the respondents herein is that whether the TWAD Board is liable to pay the same scale of pay from the date of completion of 480 days until the date of appointment order dated 20.06.2013 and 21.06.2013. And the said scale of pay ought to be increased based on the V, VI, VII pay commission scale of pay and further the respondents are entitled to selection grade and special grade and then bonus.

14. It is seen that the respondents were granted conferment from the date after completing the 480 days and the details are tabulated below:

S. No.	Name and respondent	Date of joining	Date of Appointment
1	A.Bhagvathi Paramasivam	01.04.1993	24.07.1994
2	R.Alagarraja	01.05.1998	24.08.1999
3	A.Velmurugan	01.07.1998	24.10.1999
4	M.Pitchaimani	01.08.1992	21.11.1993
5	R.Prabukumar	08.12.1998	03.04.2000
6	D.Gurusamy	01.04.1993	24.07.1994
7	N.Ravichandran	01.08.1992	21.11.1993



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S. No.	Name and respondent	Date of joining	Date of Appointment
1	P.Manikandan	05.10.1999	03.01.2000
2	S.Thirumurugan	16.04.1998	08.08.1999
3	B.Mathanprasath	01.07.1998	24.10.1999
4	M.Sathiskumar	01.12.1998	24.03.2000
5	K.Pandian	01.07.1998	24.10.1999
6	N.Balavijayakumar	31.07.2000	23.11.2001
7	S.Ayyathevan	01.07.1998	24.10.1999

15. The period from the date of completion of 480 days the Board had calculated the salary based on consolidated pay of Rs.1000/- and paid the same to the respondents. But the respondents are claiming to fix scale of pay and increase the same based on pay commission fixation and also claiming selection grade, special grade and bonus. The respondents had relied on the following Government Orders and the Board Proceedings of TWAD Board for granting periodical increase in pay fixation:

1. G.O.Ms.No.166 Finance (Pay Cell) Department dated 27.06.1989 (V Pay Commission).
2. B.P.No.337 dated 06.10.1989
3. B.P.No.264 dated 19.09.1996
4. G.O.Ms.No.162 Finance (Pay Cell) Department dated 13.04.1998 (VI Commission pay).
5. B.P.No.233 dated 29.05.1998
6. G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009 (VII Commission pay)



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16. The aforesaid government orders are applicable to the government employees alone. If TWAD Board had adopted the said government orders through any Board proceedings, then the same is applicable to the TWAD Board employees. In the present case the said government orders are adopted. Now the question arises whether the said Board Proceedings are applicable to the respondents, then the answer would be “No”, since the said Board Proceedings are applicable only for the TWAD Board employees who were recruited through recruitment process and against the exiting vacant posts alone. In the present case the respondents were not appointed against any vacant post.

17. Further under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 the Inspector of Labour has power to grant conferment of permanent status alone, but the Inspector of Labour has no power to direct the employer to create post and appoint a person. In other words, the supernumerary posts cannot be created for granting conferment of permanent status.



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18. Having said so, now the question arises regarding fixation of salary for the period from the date of completion of 480 days until the date of appointment i.e. 20.06.2013 and 21.06.2013. It is seen the respondents were receiving Rs.1000/- prior to the date of conferment from the contractor which is evident from the averment in the claim petition, hence the Board had fixed the consolidated pay of Rs.1000/-. The respondents submitted that the Board ought to fix scale of pay applicable to the regular employee. But the Board submitted that the Board has power to fix the scale of pay for the regular appointees against the vacant post alone. After considering this plea this Court is of the considered opinion that the theory of “equal work equal pay” may be attractive from the side of respondents and similarly placed persons like that of respondents. But the same would render injustice to the persons who were recruited through recruitment process and they would be put in a disadvantage position for no fault of them. Therefore, the claim of the respondents cannot be considered.

19. Further, the employer has every right to engage an employee on consolidated pay also. More so, when the appointment is not against any vacant post, then the employer is at liberty to fix consolidated pay or any other mode of pay based on their financial status. Therefore, this Court is of the considered



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opinion that the respondents cannot demand scale of pay, that too as backwages. Hence the claim of respondents regarding the fixation of salary in “scale of pay” and to grant the benefits of the V, VI, VII Pay Commission pay scale is legally not sustainable and the same is rejected.

20. And the above conclusion is supported by the terms of 12(3) settlement entered by Labour Union and TWAD Board in the case of some other persons. It is seen from the said the 12(3) Settlement, the TWAD Board had refused to grant such scale of pay to the persons who had claimed regularization / conferment and had entered into 12(3) Settlement, wherein it has been agreed to pay salary but not backwages. The Learned Counsel appearing for the respondents had relied on the said settlement and submitted that the Board had paid increased pay to the NMRs and contract labourers, but the Learned AAG vehemently objected to such statement and submitted that the terms of settlement would indicate that the NMR's were paid only notional salary by fixing nominal increase of Rs.100/- per year. The said settlement is extracted hereunder:

“Brief of the Issue:

The Tamil Nadu Water Supply & Sewage Board Central Organization (CITU) a union through its letter dt. 30.7.93 put forth various demands against the management of the Tamil Nadu Water



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Supply & Sewage Board by raising an Industrial Dispute. In connection with the above industrial dispute due to the failure of conciliation talks, the Joint Commissioner of Labour (conciliation) through his letter No. P.2/47904/93 dated 21.8.95 sent the conciliation failure report to the Government. The said report is under the scrutiny of the Government.

Apart from this some workers have already raised industrial dispute through their union for regularizing their service and filed ID 394/85, 164/86, 187/86 before the court and the court issued orders, said the orders are in partly executed circumstances, the unions made a complaint stating that the management have not implemented the judgments of the court and the same are pending.

The management and the union to make conciliation approached the Joint Commissioner of Labour (conciliation), with regard to the above said industrial dispute and the pending case. In pursuance of that, during the conciliation talks the union demanded to regularize the service of so many workers who have been working for the past so many years under the provisions of Tamil Nadu Permanent Act and demanding anti dated regularization and to pay the arrears of salary from the date of regularization. The management has regularized the service of the workers who have worked for a long time contrary to the provisions of the above said act and the union demanded the management to regularize their service legally with previous date.

But the management have stated that they will consider the demand of regularizing their service sympathetically but could not pay the backwages and the financial position of the management is not suitable.

With regard to this issue, all the workers union has conducted a conciliation meeting on 6.8.96 with the management. On the side of the labour, they have demanded to regularize the service of the worker with post-date, some amount should be given to them as arrears of salary and to pay increment in salary from the previous date



of regularization. The workers union who has raised the industrial dispute filed cases against the management to take suitable action in time with regard to the redress of the workers. And in this connection, they have spent considerable amount to compensate the same, the management should pay a considerable amount to each and every worker.

Finally, today 08.08.96 during the cancellation talks, the management, management on considering the demands of the union, an agreement has been entered with the following covenants.

Covenant of the agreement:

1. The management has agreed to regularize the service of 386 workers now who have been working on daily wage basis. They should be regularized from the date of completion of 480 days of work in 24 calendar months as per the Tamil Nadu Government Permanent Act 1981. Likewise, they have been regularized with previous date and fixed with proper pay scale and then annual Increment should be given on notional basis as per the rules of the board and also should fix the pay. The above said re-fixed salary will be given to the workers from 1.8.96.
2. The management has already regularized the service of 351 daily waged workers on 10/1994, and 4/1995, about 600 workers on 8/1996 and in 1990 also regularized the 67 workers in the year 1992. But these workers who have completed 480 days in 24 calendar months have not been fixed. The service of the above said workers will be regularized from the date of their completion of 480 days. Also, they will be given annual Increment on notional basis and re-fix their pay. The said workers will get their salary as per re-fixation from 1.8.96. The above said notional basis will be applicable to the workers who have appointed on daily wage and regularized their service in some other category. They should not get the benefits as that of seniority basis.
3. As per the clause-1 supra, 386 workers who have been regularized,



and the 351 workers who have regularized in October 94 & April 95, should be given Rs.100/- for each year instead of back wages and other demands. 6 months and above period of service will be treated as one year. But below 6 months will not be taken into account.

4. When regularizing the service in 1994 and fixed the minimum wages as Rs.1000/- but those who have not received the same, the difference of pay will be given to them now, as arrears of salary.

5. The dispute with regard to the regularization of the daily waged workers who have terminated from service and the court decided that the same is not just hence, against the same preferred appeals, withdraw the same. The management will pay Rs.100/- for one year service. Instead of back wages for the period who have worked and for other demands. 6 months and above period of service will be treated as one year. But below 6 months will not be taken into account. If any order with regard to the payment of suspension period, in this regard the arrears of pay will be given on the basis of the last pay drawn for the broken period.

6. Rs.500/- will be given as compensation to the 386 workers for their expenses to meet the legal expenses for conducting cases with regard to their demand of service regularization. The same will not consider as example. The same will be given on the basis of the decision of all the cases.

7. Apart from this those who have eligible for regularization whose service will be regularized from the date of completion of 480 days of work in. 24 calendar months with anti-dated regularization and also re-fix the pay from 1.8.96.

8. The management comes to a package deal for the demands of the workers hence; the management will withdraw the appeal as stated in the brief of the industrial dispute. Also treated that the orders of the cases will be implemented. The union has not pressed for further action with regard to the demands mentioned in the conciliation failure report of Joint Commissioner of Labour (Conciliation) dated



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21.8.95. Similarly, those who are binding upon the conditions of the above agreement, they should not raise any dispute with regard to the above demands, also agreed to withdraw, the disputes previously raised.”

21. From the above settlement it is evident that the benefits of scale of pay and the increase thereon granted in V, VI, VII pay commissions are not applicable to the respondents.

22. Admittedly the respondents herein had not entered into any separate 12(3) settlement with the TWAD Board and hence the above settlement is not applicable to the respondents. More so, when the 12(3) settlement is entered into between the labourers, trade union and the employers, the respondents ought to have been one of the members in the trade union. When the respondents have not submitted any materials to show that while entering into 12(3) Settlement, the respondents were serving in the Board and they were member in any of the trade unions which are represented in 12(3) Settlement. In such circumstances, the said settlement is not applicable to the respondents herein.



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23. However, the said settlement would indicate the issue raised between the parties, the factors taken for consideration and the solution for the issues raised by the parties. It is seen that the said 12(3) settlement was entered into for the claims which arose from the I.D.No.394/1985, I.D.No.164/1986 and I.D.No. 187/1986. This Court is of the considered opinion if the I.D. is filed in the 1986, then the said workers would have been engaged prior to 1984 and in the said settlement it is agreed to refix the pay from 01.08.1996 only and not from the date of completion of 480 days.

24. Further in the said Settlement it has been agreed that the workers are entitled to minimum wages of Rs.1000/- and the difference of pay will be given to them now as arrears of salary. Exactly this clause of agreement was taken into consideration and the Board had given the same as consolidated pay of Rs.1000/- to the defendants herein.

25. However, the said amount of Rs.1000/- pay cannot be continued for long years. In the present case the TWAD Board had calculated Rs.1000/- from the date of completion of 480 days till the date of appointment dated 20.06.2013 (in some cases 21.06.2013) and had paid the said amount. For example, for the 2nd



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respondent A.Bhagaathi Paramasivam, the Board had calculated the backwages of Rs.1000/- from 25.07.1994 to 20.06.2013 and paid Rs.2,26,893/-. This Court is of the considered opinion that the employer ought to have increased the consolidated pay periodically. In fact, the same was agreed in the 12(3) settlement wherein the Board had agreed to increase Rs.100/- every year.

26. As far as the claim of selection grade and special grade pay is concerned, this Court is of the considered opinion that the respondents are not entitled to selection grade and special grade pay. Since the said selection grade and special grade pay would be granted if the person is stagnated in a post without any promotion, then and then only the said selection grade and special grade pay would be granted. In the present case, the respondents were not even in the Board service during the alleged period of claim and hence the question of promotion and payment of selection grade and special grade pay due to stagnation in a post would not arise. Therefore, the claim of the respondents under selection grade and special grade pay is rejected.

27. As far as claim of Bonus is concerned the respondents have claimed minimum bonus. However, the contention of the Board is that the bonus cannot be



claimed as a right. Moreover, the Board is not a profit earning organization. This Court is of the considered opinion that as per Payment of Bonus Act the statutory bonus is payable and the rate of bonus would depend upon the profit of the Board. Since the Board claims financial difficulties, this Court is inclined to grant Rs. 50,000/- for the said period for each respondent as full and final settlement as far as bonus is concerned.

28. Now comes the issue of maintainability of the petition under section 33C(2) of ID Act. The respondents had included various components like scale of pay, benefits under V, VI, VII pay commission, selection grade and special grade and bonus in their claim. As discussed supra the employer is empowered to take the employee under consolidated payment also. Further this Court has also held that the employee cannot claim the selection grade and special grade as a matter of right. Also, held in the earlier 12(3) settlement which was entered for some other employees, the wages for the past period are determined not based on the scale of pay, hence the scale of pay cannot be taken for calculating the monetary benefits. And consequently, the pay commission benefits also cannot be taken into account. Even in the 12(3) Settlement for the earlier regularization / conferment the backwages was not granted. In such circumstances, when the monetary



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benefits claimed by the respondents are having various components which are arguable issues, then the monetary benefits claimed by the respondents are not automatic and the factors would indicate that the issue need elaborate consideration and the same is not simple arithmetic calculation. Hence, before determining the entitlement of the back wages, claim petition is not maintainable under Section 33C (2) of the Industrial Disputes Act. Therefore, this Court is of the considered opinion that the respondents ought to have filed a petition for determining the back wages, thereafter, ought to have filed a claim petition under section 33C(2) of ID Act and the present petitions filed by the respondents are not maintainable. Consequently, the impugned order is liable to be set aside.

29. Further as rightly pointed out by the TWAD Board the backwages are not claimed by the respondents in the earlier litigation while conferring the permanent status. Even if it is claimed the same ought to be considered by taking various facts especially the right of the employee to engage a person under consolidated pay, the financial status of the employee, non-profit nature of the institution etc. In short, the theory of Welfare State put forth by the employee and the reality of financial status / non-profit nature of the institution ought to be balanced.



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30. Having held so the petition is not maintainable, the case ought to be remitted back for calculating the monetary benefits. Since the issue is pending for more than 22 years from the date of filing of the petition and more than 30 years from the date of completion of 480 days (some respondents were granted completion of 480 days from 1994 onwards), this Court proceeds to determine the monetary benefits for the past period. Further this Court is taking the covenants stated in the 12(3) Settlement as guidelines and fixing the monetary benefits for the past period. Therefore, this Court is of the considered opinion that the TWAD Board shall pay Rs.1000/- for one year. Then increase the pay to Rs.200/- from next year onwards. Then increase for every three years Rs.100/-. Even for one month the increased amount shall be paid. For example in the case of A.Bhagaathi Paramasivam, the Board shall calculate the wages for back period as follows:

- i. From 24.07.1994 (the date of completion of 480 days) to 23.07.1995 as Rs.1000/-.
- ii. Then from 24.07.1995 to 23.07.1998 the consolidated pay shall be fixed as Rs.1,200/- per month.
- iii. Then from 24.07.1998 to 23.07.2001 the consolidated pay shall be fixed as Rs.1,300/- per month.
- iv. Then from 24.07.2001 to 23.07.2004 the consolidated pay shall be



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fixed as Rs.1,400/- per month.

v. Then from 24.07.2004 to 23.07.2007 the consolidated pay shall be fixed as Rs.1,500/- per month.

vi. Then from 24.07.2007 to 23.07.2010 the consolidated pay shall be fixed as Rs.1,600/- per month.

vii. Then from 24.07.2010 to 19.06.2013 the consolidated pay shall be fixed as Rs.1,700/- per month.

viii. Then from 20.06.2013 (the date of appointment) the scale of pay as fixed in the appointment order.

31. For the reasons stated supra, the following orders are passed:

i. The impugned orders dated 28.01.2016 passed in Claim Petitions filed in C.P.No.36/2014 to C.P.No.49/2014 are quashed.

ii. The monetary benefit for the past period from the date of completion of 480 days till the date of appointment order dated 20.06.2013 and 21.03.2013 shall be Rs.1000/- for one year. Then increase the consolidated pay to Rs.200/- for next three years. Then increase for every three years Rs.100/-. The



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detailed example is given in the previous paragraph.

iii. The consolidated bonus shall be paid for each respondent to the tune of Rs.50,000/-

iv. The respondents are entitled to cost of litigation of Rs. 3000/-.

32. The Writ Petitions are allowed with modified pay for the back period.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

06.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes

Nsr

To
The Presiding Officer,
The Labour Court,
Madurai.



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S.SRIMATHY, J

Nsr

Pre-delivery Order made in
W.P.(MD)Nos.9073 and 9074 of 2016

06.12.2024