
(2009) 10 MAD CK 0074

In the Madras High Court

Case No : Writ Petition No. 9846 of 2000

Tamil Nadu Pollution Control Board Employees Association

APPELLANT

Vs

Tamil Nadu Pollution Control Board

RESPONDENT

Date of Decision : 19-10-2009

Acts Referred:

Citation : (2010) 1 MLJ 1048

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : Balan Haridoss, for the Appellant; Raman Lal, for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The petitioners are similarly placed and have common grievance arising out of the same cause of action. Hence, they

have filed this writ petition challenging the proceedings No. 76 dated 17.11.1999 of the 1st respondent and the order of the 2nd respondent

bearing Lr. No. Per/P2/1283/99 dated 27.04.2000 and for a consequential direction to the respondents to re-fix the pay scale of the Junior

Environmental Scientist at Rs. 8000-275-13500 from the date when they were moved to Selection Grade.

2. Facts leading to the filing of this writ petition are, as under:

(i) The 1st petitioner Association filed W.P. No. 12802 of 1999 for a mandamus directing the respondent Board to dispose of their representation

dated 23.11.1998 for re-fixation of pay scale for Junior Environmental Scientists, namely, (1) A.Logambal; (2) M.Anandakumar; (3)

R.Poyyamozi; (4) R.Rajendran; (5) M.Perumal; (6) D.Ravindran; (7) M.Ravikumar and (8) K.Mathiyalagan based on the recommendations of

the one man commission constituted by the Government of Tamil Nadu on the Sixth Pay Commission Report. In the said writ petition, this Court

directed the 2nd respondent to dispose of the representation dated 23.11.1998 within a period of 4 months. However, no orders were passed

even after a lapse of 4 months and it was communicated to the petitioners. In such circumstances, the 1st petitioner association filed Contempt

Petition No. 228 of 2000. Only on coming to know about the filing of the Contempt Petition, the 2nd respondent by its order dated 27.04.2000

informed that the Board had considered the request of the Junior Environmental Scientists and the same could not be complied with since they had

already moved to the selection grade of pay in the time scale of Rs. 6500-200-11100 and the Government Order has been complied with

properly.

(ii) The petitioners would state that in the respondent Board, the aforesaid Scientific Assistants were recruited during the year 1987; later, they

were re-designated as Junior Environmental Scientists. The 1st petitioner Association filed W.P. No. 15332 of 1989 before this Court regarding

reversion in pay scale of scientific and supporting staff and regarding equation of pay scale of its members on par with Government Department.

The said writ petition was allowed and the order reverting the pay scales of members of the 1st petitioner Association was quashed. As far as the

prayer regarding equating pay scale on par with Government Department is concerned, this Court directed the respondent Board as well as the

Government to examine the request and pass suitable orders.

(iii) Based on the directions given by this Court, the respondent Board examined the request of the 1st petitioner association, regarding equation of

various scientific and supporting staff post on par with Government Department and as far as the post of Junior Environmental Scientist is

concerned, it recommended for equating the same on par with Junior Water Analyst in the Directorate of Public Health and Preventive Medicine.

Accordingly, the post of Junior Environmental Scientist was equated on par with the Junior Water Analyst working in the Directorate of Public

Health and Preventive Medicine by G.O.Ms. No. 247 dated 06.10.1994. As per the said G.O., the respondent Board also equated to the Junior

Environmental Scientist on par with Junior Water Analyst by B.P. No. 34 dated

10.10.1994. Accordingly, the pay scales of Junior Environmental Scientist was revised on par with Junior Water Analyst. The Junior Environmental Scientist and Junior Water Analyst were getting a pay scale of Rs. 1600-2660 as per the fifth pay commission.

(iv) Thereafter, as per the recommendations of the sixth pay commission, the Junior Water Analysts were placed in the pay scale of Rs. 5,300-8300. Accordingly, the Board while implementing the sixth pay commission to its employees, revised the pay scale of the Junior Environmental Scientist to Rs. 5300-8300, placing them on par with the pay scale of the Junior Water Analyst. Thereafter, on attaining 10 years of service, the 8 Junior Environmental Scientists were given selection grade pay scale at Rs. 6500-10,500/-.

(v) While so, the one man commission constituted by the Government of Tamil Nadu recommended a pay scale of Rs. 5900-9900 to the Junior Water Analyst working in the Public Health and Preventive Medicine Department. The said one man commission recommendation was accepted by the Government and by G.O. No. 546 dated 28.09.1998, the Government revised the scale of pay to Rs. 5900-9900 to Junior Water Analyst with effect from 01.01.1996 notionally for the purpose of fixation of pay in the revised scale of pay and with monetary benefits from 01.09.1998.

(vi) Since the post of Junior Environmental Scientist is equated on par with the Junior Water Analyst, the 1st petitioner Association represented to the respondent Board on 23.11.1998 to revise the pay scale of the Junior Environmental Scientist from Rs. 5300 - 8300 to Rs. 5900 - 9900 pursuant to the said G.O. No. 546 dated 28.09.1998. Since there was no reply to the said representation, reminders were sent to the 2nd respondent on 23.12.1998, 18.02.1999, 30.03.1999 and on 12.05.1999. Even thereafter, there was no reply from the respondents. Further, as per Regulation No. 31 of the Tamil Nadu Pollution Control Board Service Regulation, 1988 (hereinafter referred to as the "Service Regulation"), the respondent Board is duty bound to implement the pay, allowances, etc to its employees on par with Government Servants.

(vii) The petitioners would further state that in the Board Proceeding No. 76 dated 17.11.1999 and the Letter No. Per/P2/1283/99 dated 27.04.2000, the 1st and 2nd respondents have stated that the Board had

approved G.O.Ms. No. 546, Finance Department, dated 28.09.1998

and decided to give effect to it from 01.09.1998 and that since 8 Junior Environmental Scientists out of 9 have already moved to the Selection

Grade pay in the time scale of Rs. 6500-200-11100 which is higher than the ordinary Grade of Pay of Junior Environmental Scientists, the Board

has taken proper steps to implement the revision of pay scale of pay as per Government Orders. According to the petitioners, all the 8 Junior

Environmental Scientists were given selection grade on completion of 10 years of service, from September 1997 to January 1998 prior to issuance

of G.O.Ms. No. 546 dated 28.09.1998. The petitioners would also state that even according to the respondents, the post of Junior Environmental

Scientist is a post without promotional avenues.

(viii) The petitioners would state that on issuance of G.O.Ms. No. 546 dated 28.09.1998, the respondents should have fixed the pay scale of the

Junior Environmental Scientist in the following manner:

In 5th Pay Commission - Rs.1600-2660

In 6th Pay Commission - Rs.5300-8300

Pursuant to G.O.Ms.546 - Rs.5900-9900 with effect from

01.01.1996 and selection grade of

pay at Rs.8000-275-13500

According to the petitioners, the respondents are duty bound to revise the pay scale of the Junior Environmental Scientists on par with Junior

Water Analyst as per their Board Proceedings and Government Order in G.O.Ms. No. 546 dated 28.09.1998.

3. The respondents have filed counter affidavit and they have stated as follows:

(i) The 8 Junior Environmental Scientists were originally recruited for a particular project at the initial stages of the formation of the Tamil Nadu

Pollution Control Board to the post of Scientific Assistant in the services of the Board for which the qualification was prescribed as B.Sc. The post

of Scientific Assistant was later on re-designated as Junior Environmental Scientist and their scale of pay and qualification were fixed at Rs. 1160-

1950 (pre-revised) with M.Sc. Degree qualification, respectively, for the appointment by direct recruitment in the services of the Board. As the

Scientific Assistant post was re-designated as Junior Environmental Scientist,

they were treated on par with the post of Junior Water Analyst

working in the Public Health and Preventive Medicine Department in view of the directions issued by the High Court. The pay scales of the

petitioners were also revised accordingly, even though the qualification prescribed for Junior Water Analyst was M.Sc. Degree higher than the

Junior Environmental Scientist.

(ii) The respondents would further state that the 1st petitioner Association represented to the Board on 23.11.1998 to revise the Pay Scale of the

Junior Environmental Scientists from the then existing scale of pay of Rs. 5,300 - Rs. 8,300 to Rs. 5,900 - Rs. 9,900 scale in accordance with

G.O. No. 546, Finance, dated 28.09.1998, on par with the Junior Water Analyst in the Department of Public Health and Preventive Medicine.

However, there was delay in coming to a final decision in this regard by the respondent Board, in view of the qualification, being only a B.Sc.

Degree for the 8 Junior Environmental Scientists who had been recruited directly in 1987 before framing of Service Regulations in the services of

the respondent Board. Therefore, the petitioner Association on their behalf filed a writ petition in W.P. No. 12802 of 1999 before this Court and

on 28.07.1999, this Court was pleased to dispose of the said writ petition with a direction that the respondent Board should consider the

petitioners' representation dated 23.11.1998 and pass orders within a period of 4 months.

(iii) The respondent Board had taken up the issue of revision of pay scale in general, in respect of the post of Junior Environmental Scientists

including the 8 petitioners in pursuance of G.O. No. 546, dated 28.09.1998. The Board had passed a resolution revising the pay scale of Junior

Environmental Scientists of the Board on 27.10.1999 and communicated the same on 27.04.2000 to the petitioners. In the said communication,

the petitioners were informed that they had moved to the selection grade in the pay scale of Rs. 6500-200-11100, which was equivalent to the

ordinary grade scale of pay for the post of Environmental Scientists who were appointed by direct recruitment with P.G. Qualification of M.Sc.

Degree in the services of the respondent Board. Having not satisfied with the above said communication dated 27.04.2000, the 8 petitioners have

challenged the same through the Association before this Court together with the

proceedings of the respondent Board dated 17.11.1999 in the above writ petition invoking the jurisdiction of this Court to quash the above said proceedings of the Board as well as the communication of the

2nd respondent dated 27.04.2000 and also to direct the respondents to re-fix the pay scale of the Junior Environmental Scientist (i.e. the 8 Junior

Environmental Scientists) from the date when they had moved to the selection grade, i.e. during the period September 1997 to January 1998.

(iv) The respondents would state the relief sought by the petitioners before this Court on the basis of several grounds raised by them are irrational,

unsustainable in law and in violation of the principles of natural justice, in view of the peculiar circumstances of this case, for the following reasons :

(a) The Schedule II of G.O. No. 546, Finance, dated 28.09.1998 in respect of Selection grade contemplates that the revision of pay scale is

subject to the condition laid down in paragraph 4 of the earlier G.O.Ms. No. 162, Finance dated 13.04.1998. Even though, the post of Junior

Environmental Scientist is not considered as a feeder category to the higher post of Environmental Scientist, at the relevant point of time, when the

petitioners had become eligible for selection grade, the respondent Board taking into consideration of the non-availability of any promotional

avenues open to the 8 Junior Environmental Scientists, accordingly decided to fix the minimum pay scale which is applicable to the Environmental

Scientist which is equivalent to the selection grade of the JES/petitioners. Therefore, treating the 8 JES equally with the Environmental Scientist in

respect of the pay scale, the respondent Board had fixed their scale of pay as Rs. 6500-200-11100 despite the fact of the Environmental

Scientists working in the services of the Board are highly qualified with M.Sc. Degree receiving the same minimum pay scale of Rs. 6500-200-

11,100. Hence, the pay scale prescribed in Schedule II Item 14 of G.O.546, dated 28.09.1998 cannot be applied to the petitioners/8 JES as

sought for in the writ petition, since the Board had decided to promote notionally treating the JES as Environmental Scientist without M.Sc.,

qualification with the equal scale of pay received by the Environmental Scientist.

(b) The existing staff pattern in Scientific Category is as follows:

S.No. Post Ordinary Grade Pay Selection Grade

Scale

1 Junior Environmental Scientist

Rs.5900-200-9900 Rs.6500-200-11100

(Not a feeder category)

2 Environmental Scientist

Rs.6500-200-11100 Rs.8000-275-13500

(Direct Recruitment)

3 Deputy Manager (Lab) Rs.8000-275-13500

Rs.9100-275-14050

(Promotion)

The respondents would state that it is patently evident that the Environmental Scientists are only eligible for selection grade pay of Rs. 8000-275-

13500 after completion of 10 years of service in accordance with G.O.546 Schedule II, whereas the petitioners are without higher qualification

and are now receiving the selection grade benefits of the equal pay scale received by the Environmental Scientists in the ordinary grade.

(c) Having realised the peculiar circumstances of the petitioners' case (8 Junior Environmental Scientists) who had completed 13 years of service,

the respondent Board had sanctioned the selection grade pay which is the minimum salary made applicable to the Environmental Scientist

(Ordinary grade) pay scale. Therefore, the Board recently after deliberations felt that the 8 Junior Environmental Scientists should be given

promotion as Environmental Scientist and accordingly passed a Resolution on 12.09.2000 approving the said proposal, subject to the condition,

that the petitioners should acquire M.Sc. Degree within a period of 3 years, from the date of orders of promotion issued to each JES/petitioners.

The period of 3 years was prescribed with the object of giving them a reasonable opportunity to continue in the post of Environmental Scientist

after promotion as initiative for higher qualification. In the event of failure on the part of 8 JES to acquire the prescribed qualification within 3 years

they shall automatically be reverted to the post of Junior Environmental Scientists (Selection Grade) with the same scale of pay 6500-200-11100,

after the expiry of the period of three years prescribed for acquiring the M.Sc. Degree qualification.

4. Heard Mr. Balan Haridoss, learned Counsel for the petitioners and Mr. Raman

Lal, learned Counsel for the respondents.

5. Learned Counsel for the petitioners would submit that the respondents erred in approving the Government Order in G.O.Ms. No. 546 dated

28.09.1998 with effect from 01.09.1998 instead of 01.01.1996 for notional purpose of fixation of pay in the revised scale of pay and with

monetary benefits from 01.09.1998. He would contend that the respondents failed to note that as per Regulation No. 31 of the Service

Regulations, they are duty bound to implement the pay, allowances, etc. to its employees on par with Government Servants; while so, the

respondents should have placed the Junior Environmental Scientist in the pay scale of Rs. 8000-275-13500 being the selection grade pay scale for

Rs. 5900-200-9900.

6. On the other hand, learned Counsel for the respondents would submit that the pay scale prescribed in Schedule II Item 14 of G.O.546, dated

28.09.1998 cannot be applied to the petitioners/8 JES as sought for in the writ petition, since the Board had decided to promote notionally treating

the Junior Environmental Scientist as Environmental Scientist without M.Sc. qualification with the equal scale of pay received by the Environmental

Scientist. He would also submit that the Environmental Scientists are eligible for selection grade pay of Rs. 8000-275-13500 only after completion

of 10 years of service in accordance with G.O.546 Schedule II, whereas the petitioners are without higher qualification and they are now receiving

the selection grade benefits of the equal pay scale received by the Environmental Scientists in the ordinary grade.

7. A careful scrutiny of the case would reveal that 8 persons, who were recruited as Scientific Assistants in the year 1987 were later re-designated

as Junior Environmental Scientists and on the representation of the 1st petitioner Association to the respondents regarding equation of various

scientific and supporting staff on par with Government Department, the respondent board examined their request and as far as the post of Junior

Environmental Scientist is concerned, it recommended for equating the same on par with Junior Water Analyst in the Directorate of Public Health

and Preventive Medicine. Pursuant to the recommendation of the Board, the Government by G.O.Ms. No. 247 dated 06.10.1994 equated the

post of Junior Environmental Scientist on par with the Junior Water Analyst

working in the Directorate of Public Health and Preventive Medicine.

It is seen that Junior Environmental Scientist and Junior Water Analyst were getting a pay scale of Rs. 1600-2660 as per the fifth pay commission.

As per the recommendations of the sixth pay commission, the Junior Water Analysts were placed in the pay scale of Rs. 5,300-8300; based on

that, the respondent Board also revised the pay scale of the Junior Environmental Scientist to Rs. 5300-8300. Thereafter, on attaining 10 years of

service, the 8 Junior Environmental Scientists were given selection grade pay scale at Rs. 6500-10,500.

8. It is further seen that the One Man Commission constituted by the Government of Tamil Nadu had recommended a pay scale of Rs. 5900-9900

to the Junior Water Analyst working in the Public Health and Preventive Medicine Department and that the said recommendation has been

accepted by the Government and by G.O. No. 546 dated 28.09.1998, the Government revised the scale of pay to Rs. 5,900-9900 to Junior

Water Analyst with effect from 01.01.1996 notionally for the purpose of fixation of pay in the revised scale of pay and with monetary benefits from

01.09.1998. Since the pay scale of the Junior Water Analyst has been fixed at Rs. 5900-9900 pursuant to the said Government Order, the 1st

petitioner Association made a request to the respondent Board to revise the pay scale for Junior Environmental Scientist also. However, the

Board, by a letter dated 27.04.2000 had approved the said Government Order and decided to give effect to it from 01.09.1998 and that since 8

Junior Environmental Scientists out of 9 have already moved to the Selection Grade pay in the time scale of Rs. 6500-200-11000 which is higher

than the ordinary Grade of pay of Junior Environmental Scientists, the Board has taken proper steps to implement the revision of pay scale of pay

as per Government Orders. Accordingly, all the 8 Junior Environmental Scientists were given selection grade on completion of 10 years of service,

from September 1997 to January 1998 prior to issuance of the Government Order. Therefore, the petitioners would state that as per the 5th pay

commission, the pay scale of Junior Environmental Scientist was fixed at Rs. 1600-2660 and as per the 6th pay commission, their pay scale was

fixed at Rs. 5300-8330. It is their claim that pursuant to the issuance of the said Government Order, their pay scale has to be fixed at Rs. 5900-

9900 equivalent to the post of Junior Water Analyst.

9. It is seen that the qualification prescribed for the post of Scientific Assistant (re-designated as Junior Environmental Scientist) was B.Sc. and for

the post of Environmental Scientist was M.Sc. The 8 Junior Environmental Scientists were directly recruited in service and it is admitted that it is

not a promotional post. However, by a resolution dated 27.10.1999, in order to provide promotion to the Junior Environmental Scientists, the

Board fixed the qualification for promotion as M.Sc. The said Resolution was challenged by the 1st petitioner Association by way of a writ petition

in W.P. No. 19178 of 2000, wherein, by an order dated 13.01.2003, it was held as under:

4. Learned Counsel appearing for the petitioners submits that even according to the impugned proceedings there are 13 vacancies for the post of

Environmental Scientist and the respondents have not given any promotion to the said post. According to the proceedings, the promotion should

be made from the post of Junior Environmental Scientist even though the candidates are not having M.Sc. Degree. If such candidates after

promotion do not acquire such educational qualification, they can be reverted to the post of Junior Environmental Scientist. In view of the above,

the respondents are directed to fill up the said vacancies in accordance with the said Board proceedings at the earliest.

5. I do not find any reason to interfere with the said impugned proceedings of the Board. The Writ Petition is therefore dismissed.

9a. Aggrieved by the said order of dismissal, the petitioner preferred an appeal before this Court in W.A. No. 1404 of 2003 and the same was

also dismissed. Therefore, as fixing of qualification for promotion to the post of Junior Environmental Scientist has become final, the petitioners

cannot have any grievance against the decision of the Board and if they want to move to the promotional post of Environmental Scientist, they have

to pass M.Sc. Degree. The period of three years to pass M.Sc. was prescribed with the object of giving the Junior Environmental Scientists a

reasonable opportunity to continue in the post of Environmental Scientist after promotion, as initiative for higher promotion.

10. Now, the claim of the petitioners appears to be that they have not opted for moving to the post of Environmental Scientist and they have also

made petitions in this regard. Therefore, as they want to continue in the post of Junior Environmental Scientist in the pay scale now available to

them and that since the Selection Grade pay in the pay scale of Rs. 6500-200-11000 which is equivalent to the ordinary grade scale of pay for the

post of Environmental Scientist, they are not in a position to acquire the higher qualification of M.Sc. at this point of time after 13 years of their

service in the Department. Therefore, their claim for pay protection in the selection grade of Junior Environmental Scientist has to be considered.

11. From the discussion made in the foregoing paragraphs, it is clear that there was a challenge to the Resolution of the Board dated 27.10.1999

before this Court and the Board's Resolution was finally upheld by the learned Single Judge as well as the Division Bench, prescribing M.Sc.

Degree as qualification for moving to the post of Environmental Scientist. Therefore, as it is evident that the post of Junior Environmental Scientist is

a promotional post, as per the Board's Resolution dated 27.10.1999, the claim of the petitioners to give them pay protection as in the post of

Environmental Scientist cannot be considered. However, the claim of the petitioner in respect of pay protection as per the Government Order in

G.O.Ms. No. 546 dated 13.04.1998, wherein it is stated that the revision of scale of pay ordered for Junior Water Analyst (Sl. No. 4) shall take

effect from 01.01.1996 notionally for the purpose of fixation of pay in the revised scale of pay and with monetary benefit from 01.09.1998, has to

be considered. In paragraph 4 of G.O.Ms. No. 162 Finance Department, dated 13.04.1998, the details regarding Selection Grade and Special

Grade Scales of Pay are provided, as under:

4. The Selection Grade and Special Grade will be the corresponding revised scales based on the existing pay scales of these grades. The

appropriate revised scales of pay for Selection Grade / Special Grade are indicated in Schedule - II to the Tamil Nadu Revised Scales of Pay

Rules, 1998. Provided further, Selection Grade and Special Grade scales shall be regulated as below :

(i) For posts, having no promotional avenue, the Selection Grade and Special Grade shall be allowed as indicated in Schedule - II.

12. As per Schedule - II annexed to the above Government Order, the revised Selection Grade shown in Item 14 for the pay scale of 5900-200-

9900 is Rs. 8000-275-13,500, for which the petitioners are entitled for pay protection, if they want to continue as Junior Environmental Scientist.

Since their post is a non-promotional post, their claim for pay protection has to be considered after the date of passing of the Resolution dated

27.10.1999 on the date the said post became promotional post. It is the cardinal principle that the amendment or Rule prescribing new

qualification or making a post a promotional one, will have prospective effect unless it is specifically provided, otherwise it will have retrospective

effect.

13. In the Resolution of the Board dated 27.10.1999, it is the decision that to move to the promotional post of Environmental Scientist, the

petitioners have to pass M.Sc. Degree within a period of three years and that could be the condition which prescribes qualification and other

criteria for the promotional post which shall have a prospective effect and cannot be retrospective. Hence, the petitioners' claim for pay protection

for the period which they want to be considered as long as they want to continue in the post of Junior Environmental Scientist. Therefore, the

petitioners are entitled for pay protection from the date of the pay scale revision till the date of the Resolution of the Board dated 27.10.1999.

14. This Court, in a judgment reported in 2009 WLR 772 in the case of Association of Engineers Metro Water and Anr. v. Government of Tamil

Nadu and Ors. has held as follows:

12. It is true, the Board has a right to make regulations for governing the service conditions of its employees. But, when the employees acquire a

right to get restoration of seniority, the same cannot be taken away by the subsequent amendments retrospectively, which means, the employees,

who suffered punishment and consequential pass over prior to amendment/deletion, should be given the benefit of explanation 4, restoring the

seniority in the promoted post, and the deletion will have only prospective effect, unless the order of punishment or the orders passed on appeal

direct otherwise.

15. From the above reading of the judgment, it is made clear that any decision of the Board will have a prospective effect and it cannot take away

the vested rights available to the petitioners. Therefore, in the instant case also, the Board has passed a Resolution making the post of Junior

Environmental Scientist as a promotional one and as long as the petitioners have the benefit of the promotional post, their claim for pay protection

during that period cannot be denied.

16. In the light of the above, the impugned proceedings No. 76 dated 17.11.1999 passed by the 1st respondent and the order of the 2nd

respondent dated 27.04.2000 cannot hold good as far as the petitioners' claim for pay protection from the date of pay revision up to the date of

the Board's Resolution dated 27.10.1999. In that respect alone, the impugned orders are set aside and the respondents are directed to consider

the petitioners' claim in the light of the above discussion and grant pay protection from the date of the Government Order in G.O.Ms. No. 546

dated 28.08.1998 up to the passing of the Board's Resolution dated 27.10.1999 and disburse the same to the petitioners. This exercise shall be

completed within a period of three (3) months from the date of receipt of a copy of this order.

The writ petition is allowed to the extent indicated above. No costs.