

(2011) 02 MAD CK 0279

In the Madras High Court

Case No : Writ Petition No. 20446 of 2008

Tamil Nadu Water Supply and Drainage Board

APPELLANT

Vs

M.V. Rangarajan and The Presiding Officer

RESPONDENT

Date of Decision : 08-02-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2011) 02 MAD CK 0279

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : S. Sudharshana Sundar, for the Appellant; Labour Court, for Respondent R 2, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The Petitioner had challenged the order passed by the learned Principal Labour Court, Chennai, on an application moved by the workman u/s 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

2. The workman was working with the Petitioner as Assistant, and was thereafter promoted as Superintendent, on 30.06.1979 and Divisional Accountant based on the combined seniority maintained in the Board. Thereafter in view of the new policy of seniority, he was reverted to the post of Superintendent with effect from 20.11.1987 and again in the normal course was promoted as Divisional Accountant with effect from 18.01.1990.

3. According to the workman, the pay scale of Divisional Accountant was less than the Selection Grade scale of Superintendent, therefore, he gave an option to continue in Selection Grade Scale Superintendent by giving up practice. The workman was in the scale of Rs. 2000-60-2300-75-3200-100-3500. The pay scale was thereafter revised on recommendation of 5th Pay commission.

4. The workman claimed 5% increase in the basic pay, on the basis of

government order in G.O. No. 684, Finance Department dated 24.08.1992, which was duly adopted by the Tamil Nadu Water Supply and Drainage Board by moving application u/s 33C(2) of the Act.

5. The relevant portion of the Government Order reads as under:

4. At the same time the plea of these employees for Government to extend some sympathetic consideration has been taken note of Government Consider that these categories should be positively motivated in undertaking important items of work entrusted to them. Further job responsibilities of these categories require due recognition. Keeping in mind the importance of the job responsibilities attached to the categories in these scales of pay and the need to positively motivate these categories to undertake their responsibilities, Government have decided to grant a personal pay at five per cent of the basic pay to all categories of staff in the following scales of pay. Government accordingly direct that five per cent of the basic pay completed as on 01.08.1992 be granted as personal pay to the following:

(i) All categories of staff in the pre revised scales of pay at Rs. 475 - 775 moving over to the revised scale of pay of Rs. 775 - 1030.

(ii) All categories of staff in the pre revised scale of pay of Rs. 610-1075 moving over to the revised scale of pay of Rs. 950-1500 or Rs. 975 - 1660.

(iii) All categories of staff in the pre-revised scale of pay of Rs. 705-1230 moving over to the revised scale of pay of Rs. 1200-2040, and, (iv) All categories of staff in the pre-revised scale of pay of Rs. 905-1545 moving over to the revised scale of pay of Rs. 1600-2660.

5. . The personal pay is sanctioned under exceptional circumstances as an one time transitional measure for all the categories in the specified scales. It will apply also to the employees in the revised selection grade and special grade of these categories. The personal pay will be computed as on 01.08.1992 and will be continued as such in the event of promotion within these categories. The fraction of personal pay shall be rounded off to the nearest rupee (i.e.,) 50 paise and above shall be treated as a rupee and below 50 paise shall be ignored. It will not apply to any promotion beyond the scale of pay of Rs. 1600-2660. This personal pay will be absorbed in the fitment procedure evolved whenever the next pay commission is constituted. There shall be no entitlement for this personal pay from any other categories in any other scale. This scheme of personal pay is exclusive to the specified scales of pay keeping in mind the job responsibilities attached to the categories in these scales of pay."

6. The workman was in the grade pay of 905 - 1545, therefore was entitled to the benefit of increase of 5% as personal pay. The workman claimed relief u/s 33C(2) of the Act.

7. The learned Principal Labour Court, on appreciation of the pleadings, and evidence on record, accepted the plea of workman and directed the Management/

Petitioner to pay a sum of Rs. 14,260/- to the workman.

8. The learned Counsel for the Petitioner challenged the impugned order by referring to the Board Proceedings dated 27.07.2005, vide which the pay scale was revised with retrospective effect from 01.06.1988, which also included the pay revision of the Superintendent.

9. The contention of the learned Counsel for the Petitioner was that the learned Principal Labour Court misinterpreted, the government order to grant the relief to the Petitioner. The contention of the learned Counsel for the Petitioner is that in pursuance of the Board Proceedings dated 27.07.2005, the pay scale was revised with retrospective effect. Therefore the workman did not fall under any of the category referred to in G.O. Ms. No. 684 dated 24.08.1992, therefore the impugned order suffers from patent illegality, which is apparent on the face of the record, therefore not sustainable in law.

10. On consideration, I find no force in the contention of the learned Counsel for the Petitioner. The reading of the Government Order No. 684 dated 24.08.1992 would show that special pay of 5% was not granted because of the pay scale, but keeping in view of the fact that the employees falling under these categories undertook important items and the job responsibilities of these categories required recognition. Merely by revision of pay scale, there were no change in job responsibility, which could be the basis for denying the benefit of special pay, granted under the Government order. It is not disputed that on the date of issuance of G.O. No. 684 dated 24.08.1992, the workman was covered for benefit.

11. The other contention of the learned Counsel for the Petitioner, also deserves to be rejected, for the reason that in G.O. Ms. No. 684, the word used is pre-revised scale, therefore the government was aware of the fact, that there were chances of revision of pay scale with retrospective effect. Therefore, for the purpose of grant of 5% increase of basic pay, the pre-revised pay scale were to be taken into consideration.

12. It is not in dispute that the workman was in pre revised scale of 905 - 1545, and therefore covered under the Government Order. The order of the learned Principal Labour Court, is thus based on the correct interpretation of the Government Order, which does not call for any interference by this Court.

13. The learned Counsel for the Petitioner also referred to the Board Proceedings dated 29.07.1992 to contend that as the consequences of grant of higher pay scale, workman was not eligible for 5% increase of the pay, on their basic pay, under G.O. No. 684, specially when Board Proceedings dated 29.07.1992 were not under challenge, nor it could be challenged u/s 33C(2) of the Act.

14. This contention again cannot advance the case of the Petitioner, for the reason that before the Principal Labour Court, no such contention was raised, at the time of argument even though proceedings were placed on record. Secondly

the benefit could not be taken away by the Board Proceedings without compliance of natural justice and that too with retrospective effect. The Petitioner was entitled to grant of 5% pay increase benefit on basic pay, as rightly held by the learned Principal Labour Court.

15. For the reasons stated above, there is no merit in the writ petition which is dismissed. No costs.