

**Muthiah Vs. the Divisional Manager, Meivor Tea Division**

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**Court : Chennai**

**Decided On : Feb-20-1998**

**Reported in : (1998)2MLJ610**

**Appellant : Muthiah**

**Respondent : The Divisional Manager, Meivor Tea Division**

**Judgement :**

**ORDER**

**Y. Venkatachalam, J.**

1. This writ petition has been filed by the writ petitioner invoking Article 226 of the Constitution of India, seeking for a writ of certiorarified mandamus, to call for the records in Notice No.Na.Ka.3036/C/94, dated 20.12.1994 on the file of the respondent and to quash the same and direct the respondent to pay the wages as per V Pay Commission applicable to the Skilled workmen (Carpenter) of the Corporation Employees.

2. In support of the writ petition, the petitioner has filed an affidavit wherein he has narrated all the facts and circumstances that forced them to file the present writ petition. On behalf of the respondent, a counter affidavit has been filed rebutting all the material allegations levelled against them one after the other and ultimately they requested this Court to dismiss the writ petition for want of merits.

3. Heard the arguments advanced by the learned Counsel appearing for the respective parties. I have gone through the contents of the affidavit the counter affidavit together with the relevant material documents available on record. I also kept in my mind the various points that were raised by the learned Counsel appearing for the respective parties during the course of their arguments.

4. The point that arises for consideration in this writ petition is, as to whether there are any valid grounds to allow this writ petition or not.

5. According to the petitioner herein, he is a carpenter R.No.717 of the respondent Corporation, and he was appointed as permanent carpenter on 18.7.1981 in the Cinchona Department, Engineering Division and as per the standing order approved by the Forest and Fisheries Department in G.O.Ms.No.385, dated 21.3.1980, that the said Carpenter post is a skilled workman under skilled workman, that his wages were fixed above the workman. According to the petitioner, the difference of wages was Rs. 2.20 during 1980 and the said difference was gradually increased and he was getting Rs. 42.60 per day, which was more than Rs. 7.20 of the ordinary workman. It is also significant to note that the wages of ordinary workman is being fixed at Rs. 35.40 as on date apart from other benefits. That being so, the Cinchona Department was closed and the workmen were taken over by the respondent Corporation and the terms and conditions of the G.O.Ms.No.221, dated 3.4.1990 Environment and Forest Department, Government of Tamil Nadu reads as follows:

(iii) Tamil Nadu Tea Plantation Corporation will take over the entire labour force of cinchona Department and assume all existing obligations towards them including wages, E.S.I. EPF Contributions etc. with effect from 1.4.1990 [*Italics supplied*]. The wages payable to the cinchona Labour taken over by Tamil Nadu Tea Plantation Corporation limited will be fixed separately by Tamil Nadu Tea Plantation Corporation Limited and shall not be less than that paid new by cinchona Department.

It is the contention of the petitioner herein that the terms and conditions would clearly mentioned in the above G.O. and his wages could never be reduced but unmindful of the G.O., the respondent has depromoted him and paying Rs. 35.40

per day, which is contrary to the terms and conditions of the take over. Therefore, in this case that the respondent is acting in an arbitrary manner and that it is an unfair labour practice. It is the grievance of the petitioner herein that when he represented to the respondent for equal wages payable to the skilled workman as per V Pay Commission, he refused to consider his representation and passed the impugned order which is illegal and contrary to the terms and conditions of take over G.O. Hence this writ petition.

6. Rebutting these allegations made by the petitioner, it is stated by the respondent in the counter that as far as the service conditions of workmen worked, in the respondents corporation are concerned, the workmen are all treated alike and there is no classification of workmen as skilled or unskilled, that however or certain types of jobs the workmen are paid a job differential in wages and that the wages payable to the workmen are all governed by settlements made by the respondent Corporation with the various trade unions. It is the contention of the respondent that consequent to the vesting of the Cinchona Department with the Tamil Nadu Tea Plantation Corporation Limited, the workmen who were absorbed in service were all governed by the service condition as applicable to the workmen in the Tamil Nadu Tea Plantation Corporation Limited. Further the standing orders of the Cinchona Department has been replaced by the standing orders of TANTEA. It is also stated by the respondent that all the employees of the Tamil Nadu Tea Plantation Corporation Limited are entitled to draw only one job differential and they will have to exercise their option as to the job differential they want to receive. It is also the respondent's case that from December, 1994 onwards, he is being paid the job differential that he was drawing while he was working with cinchona Department. Further it is their strong contention that the petitioner cannot claim the job differential being paid by the corporation in addition to the job differential that he was receiving in the Cinchona Department. It is also contended by the respondents that the reference to the V Pay Commission is wholly misconceived as wages for workers are being paid only on the basis of the settlements entered between the unions and corporation and it is only employees in the staff category who are being paid salaries in accordance with the Vth Pay Commission.

7. In this case, it is not in dispute that the erstwhile cinchona Department was taken over by the respondent Corporation and that the same was governed by G.O.Ms.No.221, dated 3.4.1990. It is also admitted that the petitioner was a permanent workman in the erstwhile Cinchona Department and at the time of take over he was working as 'skilled Workman' and was getting Rs. 42.60 per day which was admittedly more than Rs. 7.20 of the ordinary workman. However, as could be seen from the impugned order the petitioner is entitled to get only Rs. 36.58 and also it is admitted that he was considered to be only a workman. In other words, the petitioner was not only depromoted in status but also is being given lesser wages than the one while he was in the Cinchona Department.

8. Now let me scrutinize the G.O. which is governing the take over. Para 8 (iii) of the said G.O.221, dated 3.4.1990 is relevant for us for the purpose of deciding this case and the same has been already extracted the previous part of this order. It goes to show that the Tamil Nadu Tea Plantation Corporation will take over the entire labour force of cinchona Department and assume all existing obligations towards them including wages, ESI/EPF contributions. etc. with effect from 1.4.1990. Further though it is stated therein that the wages payable to the cinchona labour taken over by Tamil Nadu Tea Plantation Corporation Limited will be fixed separately by Tamil Nadu Tea Plantation Corporation Limited and shall not be less than that paid now by the Cinchona Department. That being so, on the basis of the above said G.O: it is the bounden duty of the respondent to assume all existing obligations towards them including wages, ESI/EPF contribution etc. with effect from 1.4.1990 and also that though the wages payable to the petitioner will be fixed separately by Tamil Nadu Tea plantation Corporation Ltd., it shall not less than that paid then by Cinchona Department. Surprisingly in this case that duty, cast upon the respondent by virtue of the said G.O. has not at all been performed by the respondent herein. Not only that what all they have done in the matter of the petitioner herein is quite contrary to the said G.O. For that the reason stated by them is that there is no classification or workman as skilled or unskilled in the respondent Corporation and the wages payable to the workmen are all governed by settlements made by the respondent Corporation with the various trade unions, that the workmen who were absorbed in service are all governed by the service condition as applicable to the workmen in the Tamil Nadu Tea

Plantation Corporation Limited and that the standing orders of the Cinchona Department has been replaced by the standing orders of TANTEA. It is no doubt true that after absorption, the service condition and standing orders of TANTEA alone will be applicable. At the same time it is subject to the protection of the petitioner's status and salary and in such a manner TANTEA has to alter their service conditions and the standing orders. The only thing that has to be considered is at any cost and in any circumstances, the emoluments should not be less than that paid by Cinchona Department at the time of take over and subsequently it shall be at par with the emoluments applicable to the skilled workmen of Corporation Employees. All these things have not at all been done by the respondent even though they were duly brought to the knowledge of the respondent. Also it is significant to note that all the representations made by the petitioner herein in this regard were also rejected by the respondent bluntly.

9. Therefore, for all the above reasons, and in view of my discussions above, I am of the clear view that the respondent has miserably failed to implement the G.O in question in its letter and spirit and that is clear violation of the said G.O. Further as rightly pointed out on behalf of the petitioner such act of the respondent is arbitrary and amounting to unfair labour practice and that therefore, this writ petition succeeds and has to be allowed.

10. In the result, the writ petition is allowed as prayed for, with the following direction to the respondent:

1. The impugned Na. Ka. No. 3036/C/94 dated 20.12.1994 is hereby quashed;
2. the respondent is hereby directed to pay the wages as per V pay commission applicable to the skilled workman (Carpenter) of the Corporation Employees from the date from which it is applicable;
3. In case if there is no post to suit the petitioner, a supernumerary post should be created protecting his status and salary (wages) and he should be placed in that;
4. That shall be done within a period of one month from the date of receipt of copy of this order.

5. All the arrears of back wages together with all the attendant benefits on account of the said appointment and revision in wages, should be paid to the petitioner by way of cash or draft together with an interest at 12% p.a. for the period in question, within a period of 60 days from the date of receipt of copy of this order;
6. It is made clear that the respondent is not entitled to any extension of time in regard to the payment of arrears of back wages etc., and they have to follow the time schedule strictly;
7. If the respondent is not having sufficient money to pay all arrears in lump sum in cash or through D.D. the respondent is directed to draw 1/3 of the budget allotment for 97-98 from the future budget allotment for 98-99 as per the financial code and pay the same.
8. However, in the circumstances there will be no order as to costs.

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