

CASE NO.:

Appeal (civil) 6752 of 1996

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PETITIONER:

TAMIL NADU KHADI & VILLAGE INDUSTRIES BOARD

Vs.

RESPONDENT:

M.S.KRISHNASWAMY & ORS

DATE OF JUDGMENT: 13/08/2001

BENCH:

Doraiswamy Raju, S.R.Babu

JUDGMENT:

RAJENDRA BABU, J.:

On the constitution of the Tamil Nadu Khadi & Village Industries Board [for short 'the Board'] under the Tamil Nadu Khadi & Village Industries Board Act, 1959 [hereinafter referred to as 'the Act'], the Khadi Department and Village Industries wing of the Department of the Industries and Commerce stood abolished and those working either in the Khadi Department or the Village Industries wing were absorbed in the services of the Board giving an option to such persons either to work under the Board without any lien in the Government or to accept the terminal benefits and put an end to the service. The Government by order made on 26.12.1961 requested the Board to absorb the Extension Officers and Spinning Organisers and to allot them to the offices of the District Khadi Offices, Central Khadi Offices, Central Khadi & Regional Godowns and so on. Action was taken on the same. A letter was issued on 8.9.1972 by the Government stating that the services rendered by Extension Officers (Khadi) prior to their appointment as Upper Division Clerks, Upper Division Accounts cannot be counted for the purpose of their services for regular appointment to higher grade.

The High Court allowed W.P.No.1477 of 1980 filed by one Perumal Swami and directed to reckon his service under the Board as Extension Officer (Khadi) while computing the length of service as Extension Officer (Education) in the Department of Education. This order of the learned Single Judge was given effect to by the Board. On the basis of this judgment, one C. Subbayan represented that his service under the Government as Extension Officer (Khadi) should be reckoned while fitting him in the seniority list of Upper Division Clerks in the Board, though the Board had decided to the contrary in Board Proceedings No.343 dated 12.6.1964.

In the light of the judgment of the learned Single Judge of the High Court in WP No.1477/80, the matter was examined by the Government and directed to refix the seniority of the said Subbayan in the category of UDCs with effect from the date of his appointment as Extension Officers (Khadi) under the Board. The Board refixed the seniority of Subbayan by an order made on 20.11.1985 and the Chief Executive Officer of the Board also passed orders in other similar cases. Writ petitions were filed by R.Sivasubramaniam and S.Kulandhaivelu challenging the said orders on the ground that they were senior to the said Subbayan and certain others who had also been given the benefit of the judgment in Perumal Swami's case. The learned Single Judge quashed the said orders. Against that order, writ appeals were preferred. The Division Bench allowed the writ appeals. In doing so, the High Court took note of the decision in Perumal Swami's case to the following effect:

"This Government order also indicates that wherever absorption of staff of one department in another department is due to administrative reasons, their seniority is to be fixed not with

in reference to the date of their absorption in the new department but with reference to the original appointment. The Government orders referred to above clearly show that the Government has always been anxious to protect the interests of those persons who were originally recruited by one department but were absorbed in another department for administrative reasons by providing for fixation of their seniority in the transferee department, taking into account their original date of appointment and not the date of their absorption in the transferee department. There cannot be any doubt that the stand taken by the Government in those Government orders is just and reasonable for, if a person is appointed to Government service and for administrative reasons he is transferred from one department to another, his seniority and chances of promotion should not stand affected by the transfer which is not his own making."

On the ratio of the judgment in Perumal Swami's case, the High Court held that when the Board had itself acted and given effect to the same, there was no reason why similar benefits could not be extended to others. In those circumstances, the High Court also examined the powers of the Government to give directions under Section 13 of the Act and found that the direction issued by the Government was consistent with the decision of the High Court in Perumal Swami's case and the persons similarly placed were entitled to claim that their past services in the Khadi Board as Extension Officers (Khadi) should be reckoned in fixation of their seniority.

Sri C.S.Vaidyanathan, learned senior Advocate appearing for the Board, very vehemently contended that once the services of the employees in the Government came to an end and they had been given the terminal benefits, the employees of the Government who were absorbed in the services of the Board cannot now claim the benefit of the past services in the Government. From the facts averred in the writ petitions or in the writ appeals or the Government orders produced before this Court, it is not clear as to how the terminal benefits had been adjusted in respect of the erstwhile Government employees whose services stood absorbed in the Board. Be that, as it may, it is clear that the question was examined by the High Court on an earlier occasion in Perumal Swami's case which was decided fairly long time back and that decision was accepted by the Board itself. Having accepted that decision and the same had been acted upon and the benefit of seniority had been extended to others and that decision in Perumal Swami's case having become final, we think that neither is it open to the Board to contend to the contrary now nor was the learned Single Judge justified in refusing to reckon the claims of the petitioners in the writ petitions before him. Thus we find merit in their contentions and the view taken by the High Court in allowing the appeals is absolutely justified.

In the above background, we asked the learned counsel on both sides as to how the equities in this case will have to be adjusted because a large number of employees would be covered by the said decision of the High Court with the limited resources of the Board to meet the financial liabilities that might arise by way of working out the consequential benefits arising from the order made in the writ appeals which is in challenge before us.

The learned counsel for the respondents very vehemently contended that when the parties to this case have succeeded, full benefits flowing from the order made by the High Court should be extended to them; that even on the earlier occasion when Perumal Swami's case was decided they were not aggrieved and it is only when their position was sought to be altered, they had approached the court and obtained appropriate relief and in such circumstances it would not be equitable to deny them the full monetary benefits flowing from the order of the High Court.

We do not think that the matter is as easy and simple as put forth by the learned counsel for the respondents. In working out the various benefits arising to each one of the parties, the entire set up will have to be taken note of and not merely the three respondents as in one establishment there cannot be two classes of employees - those covered under the writ appeals and others who are not so covered. Such a result would lead to invidious situation, which should at all cost be avoided.

It is clear that the parties themselves were not very clear as to what their position was and that aspect was not agitated till Perumal Swami's case was decided. Even thereafter, it is only a few employees who sought to take the benefit of that order and it could not be extended to all. In such circumstances, we think the appropriate course to be followed is to direct the Board to give effect to the order made by the High Court by working out in such a way that the notional benefits arising by way of giving effect to the order made in the writ

appeals by the High Court shall be worked out. However, the financial benefits shall be limited to a period of three years prior to the date of the judgment of the High Court, i.e., from the last date of the financial year prior to the date of the order, namely, 31.3.1992. Now the monetary benefits shall be actually given [though notional benefits are worked out according to the order of the High Court] from 1st April 1992.

Subject to the modification as directed aforesaid, the appeals shall stand dismissed. No costs.

JUDIS