

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 03.07.2019****CORAM:****THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM****W.P. (MD) Nos.16491, 16626, 17657, 18527, 13506 & 13488 of 2013**

Jeganathan. K ... Petitioner in WP(MD). 16491/ 2013

K. Shunmugavel ... Petitioner in WP(MD). 16626/ 2013

1. C. Selvaraj
2. M. Mohabillasha
3. E. Sudaliandi ... Petitioners in WP(MD). 17657/ 2013

K. Panner Selvam ... Petitioner in WP(MD). 18527/ 2013

M.Govindan, ... Petitioner in WP(MD). 13506/ 2013

P.Paramasivam ... Petitioner in WP(MD). 13488/ 2013

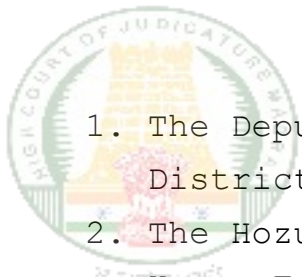
- Vs. -

1. The Deputy Director Of Health Services
Nagercoil, Kanyakumari Dt,
Pin Code 629001.

2. The Block Medical Officer,
Government Primary Health Centre,
Arudesam, S.T. Mankad (Po)
Kanyakumari Dt, Pin Code- 172.

3. The Sub Treasury Officer Sub Treasury,
Vilavancodu,
Kuzhithurai (Po)
Kanyakumari Dt, Pin Code- 163.

4. The Sub Treasury Officer, Sub Treasury,
Karingal,
Kanyakumari Dt. ... Respondents in WP(MD). 16491/ 2013



1. The Deputy Director of Animal Husbandry, .
District Livestock Farm Abisekapatti, Tirunelveli District.

2. The Hozur Trearsury Officer
Hozur Treasury, Kokkrakulam, Tirunelveli.

... Respondents in WP(MD). 16626/ 2013

1. The Assistant Director Of Agriculture,
Radhapuram, Tirunelveli District.
2. The Assistant Director Of Agriculture,
Ambasamutharam, Tirunelveli District.
3. The Assistant Director Of Agriculture, Thenkasi.
4. The Joint Director Of Agriculture, Tirunelveli.
5. The Hosur Treasury Officer Hosur Treasury Tirunelveli.
6. The Sub-Treasury Officer Sub Treasury Naguneri.
7. The Sub-Treasury Officer Sub Treasury Thenkasi.

... Respondents in WP(MD). 17657/ 2013

1. The Deputy Director Of Health Services,
Sivakasi.
2. The Hozur Treasury Officer
Hozur Treasury, Virudhunagar.

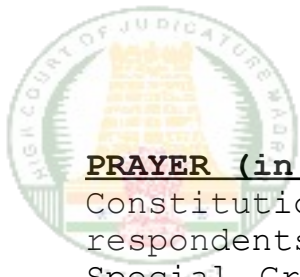
... Respondents in WP(MD). 18527/ 2013

1. The Assistant Executive Engineer,
Rural Development, Paramakudi Sub Division, Paramakudi
2. The Collector, Development Section, Ramanathapuram
3. The District Treasury Officer,
District Treasury, Ramanathapuram

... Respondents in WP(MD). 13506/ 2013

1. The Joint Director Of Agriculture,
Kattuputhukulam Road, Near Bus Stand, Pudukkottai
2. The District Treasury Officer,
District Treasury , Pudukkottai

... Respondents in WP(MD). 13488/ 2013



PRAYER (in all W.Ps.): Writ Petitions filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the respondents to implement the Ordinary Grade, Selection Grade and Special Grade Scales of Pay as indicated in Schedule - II of the Tamil Nadu Revised Scales of Pay Rules, 1998 at Rs.4000-6000, Rs.5000-8000 and Rs.5500-9000 respectively to the petitioner from the respective dates of completion of 10 years of service in the ordinary Grade and 10 years in the Selection Grade, with all consequential monetary benefits and also to revise their pensionary benefits on that basis, pay all arrears within a time stipulated by this Court.

For Petitioner : Mr.M.Ravi, in all WP's

For Respondents : Mr.K.Mu.Muthu
Additional Government Pleader
(in WP.16491/13,18527/13,13506/13
AND 13488/13)

Mr.S.Dhayalan, Government Advocate
(in WP.16626/2013)
Mr.D.Muruganantham,
Additional Government Pleader
(in WP.17657/2013)

C O M M O N O R D E R

The relief sought for in the present writ petitions is for a direction to the respondents to implement the Ordinary Grade, Selection Grade and Special Grade Scales of Pay as indicated in Schedule - II of the Tamil Nadu Revised Scales of Pay Rules, 1998, at Rs.4000-6000, Rs.5000-8000 and Rs.5500-9000 respectively, to the writ petitioners from the respective dates of completion of 10 years of service in the ordinary Grade and 10 years of service in the Selection Grade, with all consequential monetary benefits and to revise their pensionary benefits on that basis and to pay all arrears, within a stipulated time.

2. The writ petitioners, except in W.P.(MD) No.16626 of 2013, were employed as Drivers in the respondent / Departments and retired from service. The writ petitioner in W.P.(MD) No.16626 of 2013 is working as Driver in the respondent / Department.

3. At the outset, it is pertinent to state that this Court, by order dated 13.02.2018 in W.P.(MD) No.13950 of 2012, has already considered the issue with regard to grant of Ordinary Selection Grade and Special Selection Grade for the post of Driver. The relevant paragraphs of the said order are extracted hereunder:



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"2.The writ petitioners were employed as drivers and retired from service. The grievance of the writ petitioners is that their monetary benefits are getting affected on account of non-implementation of Special Grade as indicated in the Schedule-II of the Tamil Nadu Revised Scales of Pay Rules, 1998, which was issued in G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998.

3.The writ petitioners claim the revised scale of pay in the Ordinary Grade, Selection Grade and Special Grade. The point raised on behalf of the writ petitioners is that the Selection Grade and Special Grade will be corresponding rights, based on the existing scale of pay. Therefore, the respondents have not adopted the corresponding scale of pay while effecting the revision of pay in the Original Grade, Selection Grade and Special Grade. However, the writ petitioners have not substantiated their entitlements, which were reviewed in respect of the clarification of scale of pay is impermissible. The Court under Article 226 of the Constitution of India can examine the illegality or otherwise, and the decision making process and the decision fallen in this kind of matter. However, the learned Special Government Pleader solicited the attention of this Court in respect of the judgment delivered on 18.11.2013, in batch of writ petitions, this Court elaborately adjudicated the very same issue in relation to G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998 and rejected the claim of the writ petitioners for revision of pay. The relevant paragraphs are extracted hereunder:

32. It is recorded in paragraph 6 of the judgment that the ordinary grade scale of pay as on 01.01.1996 as per G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998, is Rs.3050. As stated above, as per the impugned proceedings dated 01.10.2007 in those batch of writ petitions and the counter-affidavits, the ordinary grade scale of pay of the Drivers at Rs.975-1660 was revised to Rs.3200-4900 as per G.O.Ms.No.162. While Rs.950-20-1150-25-1500 was revised to Rs.3050-75-3950-80-4590, in G.O.Ms.No.162. The case of both sides is that the Drivers' scale of pay prior to 01.01.1996 was Rs.975-1660 and therefore, the revised pay as per G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998 was Rs.3200-4900.

34. Just because the wrong fixation is continued in other departments, the same cannot be the basis to claim such fixation.



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Ultimately, as stated above, the learned Judge directed the Government to fix Selection Grade and Special Grade as per G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998.

35. Therefore, in my view, the order of the learned Single Judge, as per paragraph 7, is to give Selection Grade and Special Grade pay to Drivers as per G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998. There is no categorical finding by the learned Single Judge that the Selection Grade and Special Grade of the Drivers as per G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998 is Rs.5000-8000 and Rs.5500-9000 respectively.

47(i). At this juncture, it is relevant to refer to the judgment of the Apex Court in Union of India Vs. Shri Bhanwar Lal Mundan, reported in (2013) 6 MLJ 736 (SC). In the said judgment, the respondent was appointed as a Gangman in the Railways on 15.01.1966 as a substitute. He was regularized in 1972. He was promoted as Store Keeper in October 1977. Thereafter, he was sent on deputation to Construction Organization in December 1977. He was given PW Mistry in the Construction Organization from 10.04.1981 and he was given scale of pay of Rs.1400-2300. When there was a regular selection in the parent department for the post of Junior Engineer I, he was called to participate in the selection. He was successful and he joined promotional post of Junior Engineer I on 03.12.1994. He was to retire on 31.12.2007. It was noticed before his retirement that he was fixed higher pay in the post of Junior Engineer I at the time of promotion in 1994, taking into account his pay fixation in the construction wing, while other promotes were given lesser pay. The same was sought to be corrected on 22.10.2007 after 13 years by refixing his pay and directing recovery of the excess sum.

47(ii). The refixation and recovery was questioned by the respondent before the Central Administrative Tribunal (CAT), Jodhpur Bench in O.A.No.109 of 2008. The Tribunal quashed the refixation and recovery.

47(iii). The Department filed Civil W.P.No.11838 of 2010 before the Rajasthan High Court. The Division Bench of the Rajasthan High



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Court dismissed the same on 09.05.2011. Thus, the Union of India filed an appeal before the Apex Court.

47(iv). The Apex Court allowed the appeal and held that the respondent cannot have the benefit of wrong fixation. However, the Apex Court held that there cannot be recovery of the amount already paid, particularly, recording the statement made by the learned counsel who appeared for the Union of India.

47(v). When the respondent therein relied on the decision in Union of India and Another Vs. P.N.Natarajan and Others, (2010) 12 SCC 405, that the withdrawal of pensionary benefits without notice is illegal, the Apex Court held that the said decision shall be read in the context of its facts and not to be considered as a precedent for the proposition that if the pay has been erroneously fixed that cannot be revised even if the facts are absolutely clear and undisputed.

47(vi). Paragraphs 16 and 17 of the judgment of the Apex Court in (2010) 12 SCC 405 are extracted as hereunder:

"6. In Union of India and another v. P.N.Natarajan and others, (2010) 12 SCC 405 the Court was dealing with a fact-situation where there was withdrawal of pensionary benefits. Adverting to the concept of natural justice and, relying on the decisions in State of Orissa V. Dr.Binapani Dei, AIR 1967 SC 1269 and Sayeedur Rehman V. State of Bihar, (1973) 3 SCC 333, the Court ruled thus: -

16. It is not in dispute that before directing revision of the pension, etc. payable to the private respondents, the Central Government did not give them action-oriented notice and opportunity of showing cause against the proposed action. Therefore, it must be held that the direction given by the Central Government to revise the retiral benefits including the pension payable to the respondents was nullity.

17. Dehors the above conclusion, we are convinced that the action taken by the appellants to revise and reduce the retiral benefits payable to the respondents was ex facie arbitrary, unreasonable and unjustified



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and the learned Single Judge did not commit any error by declaring that the Central Government did not have the jurisdiction to unilaterally alter/change the option exercised by the writ petitioners under Section 12-A(4)(b) read with Section 12-A(4-C).

17. The aforesaid conclusion was arrived at as the Union of India as such could not have invoked the terms of the memorandum of settlement to justify the directives and retiral benefits payable to the respondents. The aforesaid decision has to be read in the context of its facts and not to be construed as a precedent for the proposition that if the pay has been erroneously fixed that cannot be revised even if the facts are absolutely clear and undisputed."

47(vii). In my view, last few lines that are highlighted in paragraph 17 of the judgment of the Apex Court directly applies to this case. The wrong fixation made at some places in other departments cannot be relied on as a precedent for seeking fixation to the petitioners. The facts are clear and not disputed. It is a different matter, if the petitioners demonstrated that their ordinary grade pay as per G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998, is Rs.4000-6000 and then they are entitled to the corresponding Selection Grade and Special Grade pay are at Rs.5000-8000 and Rs.5500-9000 respectively. But it is otherwise demonstrated by the learned Advocate General that the scale of pay of the Drivers prior to 01.01.1996 was Rs.975-1660 which was revised to Rs.3200-4900 and the corresponding Selection Grade and Special Grade pay are Rs.4000-6000 and Rs.4300-6000 respectively.

47(viii). It is again reiterated that G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998, only revised scale on "pay scale to pay scale" basis and the Government Order does not give any revision on the basis of post while earlier revisions were based on the posts. Therefore, to ascertain the revision of pay scale as on 01.01.1996 as per G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998, for the Drivers, one should ascertain the scale of pay of the drivers prior to 01.01.1996. It is not in dispute that before



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01.01.1996 the scale of pay for Drivers was Rs.975-1660 and the same was revised in G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998 to Rs.3200-4900. Therefore, in view of the aforesaid judgment of the Apex Court and more particularly, paragraph 17, the petitioners cannot seek the Selection Grade and Special Grade scale of pay at Rs.5000-8000 and Rs.5500-9000 based on wrong fixation at some places in some departments.

47(ix). It is relevant to extract paragraph 22 of the judgment in (2010) 12 SCC 405 which reads as hereunder:

"22. In the case at hand, as stated earlier, the respondent was getting higher scale of pay in the post while he was holding a particular post as a deputationist. After his repatriation to the parent cadre on selection to a higher post he was given higher scale of pay as it was fixed keeping in view the pay scale drawn by him while he was working in the ex-cadre post. Such fixation of pay, needless to say, was erroneous and, therefore, the authorities were within their domain to rectify the same. Thus analysed, the irresistible conclusion is that the tribunal and the High Court have fallen into error by opining that the respondent would be entitled to get the pension on the basis of the pay drawn by him before his retirement."

47(x). Therefore, a reading of the paragraph 17 read with paragraph 22 of the judgment in (2010) 12 SCC 405, makes it clear that the petitioners cannot ask for extension of wrong fixation made at some places in some departments, namely, Health Department, Revenue Department, Rural Development and Panchayat Raj and Agriculture Department, particularly, when the Government has clarified the same in the letter dated 31.12.1998 that has been extracted above.

52. The claim for grant of Selection Grade and Special Grade at Rs.5000-8000 and Rs.5500-9000 is based on erroneous fixation at some places in some departments and the petitioners are not able to point out as to how they are entitled to the ordinary grade scale of pay at Rs.4000-6000 as on 01.01.1996 as per G.O.Ms.No.162, Finance (Pay Cell) Department,



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dated 13.04.1998, and unless the petitioners establish that they are entitled to the Ordinary Grade Pay of Rs.4000-6000, they are not entitled to the corresponding Selection / Special Grades pay of Rs.5000-8000 and 5500-9000. On the other hand, as as per G.O.Ms.No.162, the Ordinary Grade scale of pay of the Drivers is Rs.3200-4900 as 01.01.1996 and the persons, who were in receipt Rs.1200-2040 prior to 01.01.1996, were only given Rs.4000-6000 revised scale of pay, but the Drivers were not given Rs.1200-2040 before 01.01.1996 and they were given only Rs.975-1660, for which Rs.3200-4900 is the ordinary Grade pay.

53. Therefore, based on the aforesaid judgments and more particularly judgment of the Apex Court judgment in Union of India v. Shri Bhanwar Lal Mundan, reported in (2013) 6 MLJ 736 (SC), I am of the view that the petitioners cannot rely on the erroneous fixation in support of their claim.

54. For all the aforesaid reasons, the writ petitions fail and the same are dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

4. In view of the elaborate adjudication made in the above judgment, no consideration is required in respect of the claim of the writ petitioners. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed. "

4. The facts and circumstances of the present case on hand are also similar to the facts and circumstances of the case cited supra.

5. This apart, the similar issue has been decided by the Honourable Division Bench of this Court, by Judgment dated 08.07.2015 in W.A.No.1398 of 2013 etc., batch and the appeals filed by the Department were allowed by the Division Bench. The special leave petition preferred against the Judgment of the Division Bench was also confirmed by the Apex Court.



6. This being the factum of the case, no further adjudication is required in respect of the grounds raised in the present writ petitions.

7. Accordingly, the writ petitions stand dismissed. No costs.

Sd/-

ASSISTANT REGISTRAR (CRL SIDE)

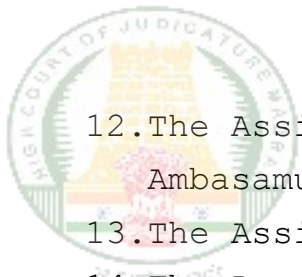
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SUB ASSISTANT REGISTRAR (CS)

krk

To:

1. The Deputy Director of Health Services,
Nagercoil, Kanyakumari District,
Pin Code 629 001.
2. The Block Medical Officer,
Government Primary Health Centre,
Arudesam, S.T.Mankad (Po),
Kanyakumari District,
Pin code 629 172.
3. The Sub Treasury Officer,
Sub Treasury,
Vilavancodu,
Kuzhithurai District,
Pin code 629 163.
4. The Sub Treasury Officer,
Sub Treasury,
Karingal, Kanyakumari District.
5. The Deputy Director of Animal Husbandry, .
District Livestock Farm Abisekapatti, Tirunelveli District.
6. The Hozur Trearsury Officer
Hozur Treasury, Kokkrakulam, Tirunelveli.
7. The Joint Director Of Agriculture, Tirunelveli.
8. The Hosur Treasury Officer Hosur Treasury Tirunelveli.
9. The Sub-Treasury Officer Sub Treasury Naguneri.
10. The Sub-Treasury Officer Sub Treasury Thenkasi.
11. The Assistant Director Of Agriculture,
Radhapuram, Tirunelveli District.



- 12.The Assistant Director Of Agriculture,
Ambasamutharam,Tirunelveli District.
- 13.The Assistant Director Of Agriculture, Thenkasi.
- 14.The Deputy Director of Health Services, Sivakasi.
- 15.The Hozur Treasury Officer
Hozur Treasury, Virudhunagar.
- 16.The Assistant Executive Engineer,
Rural Development, Paramakudi Sub Division, Paramakudi
- 17.The Collector, Development Section, Ramanathapuram
- 18.The District Treasury Officer,
District Treasury, Ramanathapuram
- 19.The Joint Director Of Agriculture,
Kattuputhukulam Road, Near Bus Stand, Pudukkottai
- 20.The District Treasury Officer,
District Treasury , Pudukkottai

4cc's TO MR. M. RAVI, ADVOCATE SR 73256, 73257,73258, 73255

1CC TO THE SPL GOVT PLEADER SR 73390, 73502, 73389, 73479, 73494

KK

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