



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 19.03.2020**

**CORAM:**

**WEB COPY**

**THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN**

**W.P (MD) No. 15786 of 2015**

**and**

**M.P (MD) No. 1 of 2015**

Tamil Nadu Public Works Department  
Irrigation Assistant Retired Employees  
Association,  
Represented by its President,  
C.Thangavel,  
No.72-A, 2118 Sakkanayakkan Street,  
Thanjavur-9.

... Petitioner

vs.

1.The State of Tamil Nadu,  
Rep. by its Secretary to Government,  
Finance Department,  
Fort St. George,  
Chennai-9.

2.The State of Tamil Nadu,  
Rep. by its Secretary to Government,  
Public Works Department,  
Fort St. George,  
Chennai-9.

3.Engineer-in Chief and  
Chief Engineer (General),  
Public Works Department,  
Chepauk, Chennai-5.

4.Chief Engineer, PWD, W.R.O.,  
Trichy Region,  
Trichy-20.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the Impugned Order in Letter No.22989/C2/2014-6, dated 29.06.19 on the file of the second respondent and quash the



same and further directing the Respondents to pay to the petitioner's Association members the arrears from 01.06.1988 to 31.07.1999 in scale of pay of Rs.1200-30-1560-40-2040.

For Petitioner : Mr.R.Maheswaran  
For Respondents : Mr.J.Gunaseelan Muthaiah,  
Additional Government Pleader

**ORDER**

This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the Impugned Order in Letter No.22989/C2/2014-6, dated 25.06.15 on the file of the second respondent and quash the same and further directing the Respondents to pay to the petitioner's Association members the arrears from 01.06.1988 to 31.07.1999 in scale of pay of Rs.1200-30-1560-40-2040.

2. The case of the petitioner's Association is that all the members are working as Irrigation Assistants (Luscars) with selection grade and special grade scale of pay from the date of their regularisation. The selection grade has to be conferred in the scale of pay equivalent to that of "head coolie" as the nature of work of Luscars is equal to that of head coolie. The said demand was considered by the third respondent and the third respondent by his letter No.S4(3)/65265/97 dated 13.05.1999 as conferred Selection Grade and Special Grade pay for the Irrigation Assistants on their completion of 10 years and 20 years respectively in the scale of "head coolie" i.e., Rs.1200-30-1560-40-2040 and the same was fixed only from 01.08.1999. The arrears from 01.08.1888 to 31.07.1999 were not paid to the Irrigation Assistants. The said order of the third respondent was implemented for certain period and subsequently the same was stopped and orders were passed for the recovery of the same amount. Hence, the Irrigation Workers Union filed a writ petition before this Court in W.P.No.39835 and 39836 of 2006.

3. The learned counsel for the petitioner would submit that during the pendency of the writ petition, the second respondent issued a Government Order in G.O.Ms.No.12 Public Works C2 Department, dated 20.01.2009 amending the Special Rules for the Tamil Nadu Engineering Subordinate Service with effect from 02.08.1984. By virtue of the said amendment the cadre of Irrigation Assistants (Luscars) has been included in the Government Services. The post of head coolie is designated as Work Inspector. Further, the Irrigation Assistants, who have passed the 8<sup>th</sup> standard examination are entitled for the scale of pay for Work Inspector on their completion of 10 years as Irrigation Assistants. This Court by order dated 21.07.2010



disposed of the Writ Petitions in W.P.No.39835 & 39836 of 2006 stating that by virtue of the amendment all the Irrigation Assistants are entitled for Special grade of pay in Work Inspector scale i.e., Rs.1200-30-1560-40-2040 on the completion of 10 years. In view of the order passed by this Court, the Irrigation Assistants are continuing to receive the above said scale of pay. Further, the Irrigation Assistants from the Districts other than Trichy, Madurai and Coimbatore regions have been paid with arrears in scale of pay Rs.1200-30-1560-40-2040 from 01.06.1988 to 31.07.1999. The members of the petitioner Association are all retired Irrigation Assistants hailing from Trichy, Madurai and Coimbatore Regions. They have not been paid with the arrears till to day and about 30 members have already expired without receiving the arrears. On 06.06.2014 the petitioner Association have given a representation to the respondents for the implementation of the orders passed by this Court in W.P.No.39835 & 39836 of 2006 and filed a writ petition in W.P.(MD)No.15374 of 2014 with a prayer to implement the Government Order in G.O.Ms.No.12, Public Works(C2) Department, dated 20.01.2009 by providing the arrears to the petitioner's Association.

4. He further stated that this Court by order dated 12.01.2015 directed the first respondent to consider the proposal and Public Works Department and pass orders on the representation dated 19.08.2014 in the light of G.O.Ms.No.12, dated 20.01.2009 within a period of 12 weeks from the date of receipt of copy of the order. The first respondent has not passed any orders on the expiry of 12 weeks in Contempt Petition No.746 of 2015 before this Court. The second respondent by an order dated 25.06.2015 has rejected the claim of the petitioners and has not granted any arrears and hence, they challenge the said orders of the second respondent and as per the said orders, they are entitled to receive the arrears.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

6. The respondents arguments that the petitioner-Irrigation Assistants earlier known as Lascars, were provided with the Ordinary Grade scale of pay of Rs. 250-5-330-10-400 and with the Selection Grade scale of pay of Rs. 265-5-325-10-425 with effect from 1.4.1978 based on the recommendations of the Third Tamil Nadu Pay Commission implemented vide G.O.Ms.No.1050, Finance (Pay Cell) Department, Dated 05.10.1978. The Irrigation Assistants have been awarded Selection Grade / Special Grade on completion of 10/20 years of service reckoning from the date of their regularization I.e., from 02.02.1977. Further, based on the recommendation of the Fourth Tamil Nadu Pay Commission, the Government ordered in G.O.1772, PWD, Dated: 11.10.1985 to count the ten year period from



the date of their provincialisation without the benefit of re-fixation of pay. Subsequently, in G.O.2894, PWD, Dated 05.12.1986, the Government modified the earlier orders to grant selection /special grade on the actual date of completion of ten years from the date of their provincialisation. Thus, the Irrigation Assistants and the Work-Charged Establishments personnel were awarded selection grade on completion of ten years from the date of their provincialisation on the recommendation of the Fourth Pay Commission with effect from 01.10.1984.

7. It is further submitted that the Government in G.O.Ms.No.304, Finance (PC) Department, Dated 28.03.1990 re-introduced the scheme of Selection Grade and Special Grade with improved scales of pay to all the Government servants implemented with effect from 01.06.1988 which is applicable for those who have moved to Selection Grade / Special Grade prior to 27.06.1989. The orders took effect from 27.06.1989. The Government was generous and extended the concession to all eligible Government servants. It is submitted that the contention of the petitioner that the Irrigation Assistants are equivalent to "Head Coolie" (Head Mazdoor) is a misrepresentation of facts by the petitioner. The general description of duties and responsibilities of a Head Mazdoor is to assist the section head in reporting progress of works: to see that the contractors carry out the instructions of the department; to ensure quality in execution of works; to assist in taking measurements and check-measurement of works; to collect soil samples and foundation details in burrow areas, trial pits etc. Whereas the "Lascar" (now known as Irrigation Assistant) is responsible for Government properties under his jurisdiction (normally 8 km stretch) such as Head sluice, weirs etc; and guarding and maintenance of usufruct trees (As per the orders issued in G.O.Ms.No.1064, Public Works Department, Dated 05.06.1980). Therefore, it is submitted that the duties and responsibilities of a Head Mazdoor and an Irrigation Assistant is totally different from each other and the service of both categories are not one and the same as contented by the petitioner.

8. It is further submitted that the Engineer-in-chief WRO and Chief Engineer (General) has clarified in his Letter No. S4(3)/65265/976, Dated 13.05.1999 that the scale of pay of Selection Grade / Special Grade Irrigation Assistant has to be fixed at Rs. 950-1500 / Rs.1200-2040 respectively with effect from 01.06.1988. As regards the demand of the petitioner Association to fix the Selection Grade Irrigation Assistants in the scale of pay of Rs. 1200-2040, the Government had issued orders in D.O. Letter No. 54763/CMPC/99-2, Finance Department, Dated:23.9.99 to the effect that the orders issued in G.O.Ms.No.250, Finance (CMPC) Department, Dated 21.03.1994 were issued based on the application



filed in the Tamil Nadu Administrative Tribunal to set aside the clarification issued by the Government in Letter No. 6307/PC-II/92, Finance dept, dated: 12.3.1992 and to make them eligible to get their pay fixed with reference to pre 1.6.88 position based on the pay drawn in the Special Temporary post in the Pre-revised scale of pay and corresponding revised scale of pay with effect from 1.6.88 as personal to the incumbents in the post of Work Inspector. Hence, the orders issued in the above Government Order will be applicable only to the post of Work Inspector and not for any other categories. The Irrigation workers Union Thanjavur represented by one Thiru. S. Rajendran, Secretary, aggrieved by that order, filed W.P.No. 39835 and 39836 of 2006 (T) (O.A.No. 7484 and 1999) with a prayer to quash the Government D.O. Letter No. 54763/CMPC/99-2, Finance Department, Dated 23.9.1999 and the consequential orders issued by Engineer-in-Chief and Chief Engineer (General) dated 16.11.1999. The Hon'ble High Court in its order dated 27.07.2010 has disposed of the writ petitioner citing the orders issued in G.O. 12, Public Works Department, Dated 20.01.2009. Consequent on the disposal of the above said Writ Petitioner the Government have issued clarification in Government Letter No.2128/C2/2008-20, PWD, Dated 28.11.2014 that the Selection Grade Irrigation Assistants (erstwhile Lascar) are as follows:-

Irrigation Assistant (erstwhile Lascar)

|                    | w.e.f.<br>1.4.1978<br>(Rs.) | w.e.f.<br>1.10.1984<br>(Rs.) | w.e.f.<br>1.6.1988<br>(Rs.) | w.e.f.1.1.19<br>96<br>(Rs.) |
|--------------------|-----------------------------|------------------------------|-----------------------------|-----------------------------|
| Ordinary<br>Grade  | 250-400                     | 450-720                      | 775-1030                    | 2610-3540                   |
| Selection<br>Grade | 265-425                     | 475-775                      | 8---1150                    | 2650-4000                   |
| Special<br>Grade   | ---                         | ---                          | 950-1500                    | 3050-4590                   |

\*\* Limited to the scale of pay of the first level promotion post viz., Head Irrigation Assistant.

The Irrigation Assistants are entitled to the Selection Grade scale of pay of Rs.800-1150 and the Special Grade scale of pay of Rs.950-1500 only with effect from 1.6.1988.

9. According to the said clarification issued it is submitted by the learned Additional Government Pleader that the selection grade at Rs.3050-4590 with effect from 1.1.1996 and not entitled for the higher scale of pay of Rs.4000-6000. All the Irrigation Assistants were granted Selection Grade/Special Grade on completion of 10/20 years from the date of provincialisation and nobody was denied Selection Grade/Special Grade pay on completion of 10/20 years from the date of provincialisation. Based on the



Government Letter No.2128/C2/2008-20, PWD, dated 28.11.2014 the fixation of pay made erroneous resulted in recovery. The pay of the Irrigation Assistants fixed in terms of the Irrigation Assistants fixed in terms of the Chief Engineer (General), PWD in its letter No.S4(3)/65265/97, dated 13.05.1999 has been revised based on the instruction of the Govt.D.O.Lr.No.54763/CMPC/99-2, Finance Department, dated 23.09.1999. Meanwhile, the recovery was stopped based on the interim direction of the Tamil Nadu Administrative Tribunal, dated 08.12.1999 in O.A.No.7848 of 1999. It is clear that the category of irrigation Assistant (formerly known as Lascars) has been included under Se.No.26 and in Annexure-II of the G.O., the qualification required for each post has been detailed therein. As per the said clarification it is clear that the Irrigation Assistant must have passed VIII standard; must know cycling and must have knowledge in irrigation and water regulations. On the other hand, a Work Inspector when recruited directly must possess I.T.I.Certificate in Draughtsman Civil Trade and must have undergone apprenticeship training for a period of not less than one year in Government or any other organization recognized by the Government. If required by promotion, the candidate should have passed VIII standard and must have experience of not less than ten years as Head Irrigation Assistant or Irrigation Assistant or Helper or both put together. It is therefore submitted that the post of Work Inspector is a promotion post from the feeder post of Head Irrigation Assistant/irrigation Assistant, who have completed ten years of service. The post of Irrigation Assistant is not equivalent to the post of Work Inspector as contended by the petitioner. He also further submitted that the G.O.Ms.No.250, Finance Department, dated 21.03.1994 will be applicable only to the Work Inspectors and not for other categories as the scales.

10. He also further submitted that in G.O.Ms.No.250, Finance Department, dated 21.03.1994 will be applicable only to the Work Inspectors and not for other categories as the scales of pay mentioned in the said Government Order is personal to the incumbents in the post of Work Inspector. The said representation of the petitioner, dated 19.08.2014 to pay the arrears of pay due as per the earlier orders allowing higher scale of pay has been duly considered on the directions of the Hon'ble Chigh Court order dated 12.01.2015 made in W.P(MD)No.15374 of 2014. The directions of this Court has been obeyed and issued necessary orders in Government Letter No.22980/C2/2014-6, PWD, dated 25.06.2015.

11. It is submitted that the Government after careful consideration of its resources and revenue besides the allocation made to the welfare schemes for the people of the State revised the scale of pay of all its employees. It is submitted that fixation of pay is an executive function of the Government and the



Government is bound to maintain an equilibrium among the various categories of employees for the smooth functioning of the Government. In this connection, it is submitted that the following portion of the order of the Apex Court in Chandra and Others Vs.State of Jharkhand and other (2007) 8 Sec.279. There is broad separation of powers under the Constitution and the judiciary should not ordinarily encroach into the executive or legislative domain.

12. It is found as stated by the counsel for the petitioner that the non-sanctioning of arrears to the Irrigation Assistants from Trichy, Madurai and Coimbatore regions alone would amount to violation of principles of equality and hence the Impugned Order is liable to be set aside and that score itself. The respondents cannot pick and choose any employee to provide any benefit. Hence, the petitioner's Association members are entitled for arrears from 01.06.1988 to 31.07.1999 as provided to the other Irrigation Assistants apart from Trichy, Madurai and Coimbatore regions. The benefits for the petitioner cannot be denied on the ground of financial commitment as the same has been sanctioned for other Irrigation Assistants.

13. In the Impugned Order it is stated that Selection grade pay of 950-1500 is sanctioned to irrigation Assistant with effect from 01.06.1988 and special grade of pay Rs.1200-2040 would not be payable to the petitioners. The said contention is liable to be set aside in view of G.O.Ms.No.12.

14. Considering the above averments by both counsels it is clear that on going through the additional typed set of papers that some of the similarly placed persons were paid arrears from 01.06.1986, which has been informed by the Executive Engineer, PWD, Lower Division, Palaru Water Basin. The non-payment of arrears to the petitioner are vindicatre and biased one.

15. Hence, this Court is of the view that on 15.02.2012 the letter issued by Executive Engineer, wherein, it is found that since they have also forwarded the request to the second respondent to the Government letter No.21287 C2/2008-9, dated 11.10.2011. This Court is of the view that when the Tribunal has also passed an order, ordering recovery of the said amount, which has been stayed subsequently. This Court directs the respondents to consider the said representation of the petitioner by considering that the similarly placed persons have been already paid the arrears, and to pass appropriate orders, within a period of three weeks from the date of receipt of a copy of this order. The impugned order is set aside.



16. In view of the observations made above, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

am

To

1.The Secretary to Government,  
Finance Department,  
Fort St. George,  
Chennai-9.

2.The Secretary to Government,  
Public Works Department,  
Fort St. George,  
Chennai-9.

3.Engineer-in Chief and  
Chief Engineer (General),  
Public Works Department,  
Chepauk, Chennai-5.

4.Chief Engineer, PWD, W.R.O.,  
Trichy Region,  
Trichy-20.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate ( SR-12588[F] dated 19/03/2020 )

+1 CC to M/s.SPL.GP ( SR-12649[F] dated 20/03/2020 )

**W.P (MD) No. 15786 of 2015**  
**19.03.2020**

TR(08.06.2020) 8P 7C