



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**W.P(MD)Nos.1465, 1468, 1472, 1473, 1481, 1531, 1533, 1584, 3003,
3004, 3005, 3007, 2020, 3883, 3889, 3893, 3904 of 2020**

and

Connected Miscellaneous Petitions

1.T Mohandhas	...Petitioner in WP(MD). 1465/ 2020
2.S.Rajesh	...Petitioner in WP(MD). 1468/ 2020
3.S.Murugesan	...Petitioner in WP(MD). 1472/ 2020
4.C.Maryjohn	...Petitioner in WP(MD). 1473/ 2020
5.G.Ravikumar	...Petitioner in WP(MD). 1481/ 2020
6.K.Rajesh Kumar	...Petitioner in WP(MD). 1531/ 2020
7.F.Stalin Raja	...Petitioner in WP(MD). 1533/ 2020
8.T.Jeyamani	...Petitioner in WP(MD). 1584/ 2020
9.P. Anbazhagan	...Petitioner in WP(MD). 3003/ 2020
10.J. David Stanley	...Petitioner in WP(MD). 3004/ 2020
11.R.Rajendran	...Petitioner in WP(MD). 3005/ 2020
12.G. Dickson Jebasingh	...Petitioner in WP(MD). 3007/ 2020
13.V.V.Girishkumar	...Petitioner in WP(MD). 2020/ 2020
14.V.George	...Petitioner in WP(MD). 3883/ 2020
15.D.Robert Raj	...Petitioner in WP(MD). 3889/ 2020
16.P.Krishnan	...Petitioner in WP(MD). 3893/ 2020
17. T.Rajakumar	...Petitioner in WP(MD). 3904/ 2020

Respondents in WP(MD) .Nos.1465,1481,1468,1472 and 1473 of 2020

- 1.The Principal Secretary to Government.,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai-600 009.
- 2.The Director of Town Panchayat,
Town Panchayat Directorate,
MRC Nagar, Raja Annamalaipuram,
Chennai-600 028
- 3.The Assistant Director of town Panchayats,,
Collectorate Buildings, Nagercoil,
Kanyakumari District-629 001.



- 4.The Exeuctive Officer,
Killiyoor Town Panchayat, Killiyoor,
Kanyakumari District.

Respondents in WP (MD) .Nos.1531, 1533 and 1584 of 2020

- 1.The Principal Secretary to Government.,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai-600 009.
- 2.The Director of Town Panchayat,
Town Panchayat Directorate,
MRC Nagars, Raja Annamalaipuram,
Chennai-600 028
- 3.The Assistant Director of Town Panchayats,
Collectorate Buildings, Nagercoil,
Kanyakumari District-629 001.
- 4.The Exeuctive Officer,
Keezhkulam Town Panchayat,
Keezhkulam, Kanyakumari District.

Respondents in WP (MD) .No.2020 of 2020

- 1.The Principal.Secretary to Government.
Municipal Administration and Water Supply Department,
Fort St.George, Chennai - 600 009.
- 2.The Director of Town Panchayat,
Town Panchayat Directorate,
MRC Nagars, Raja Annamalaipuram,
Chennai - 600 028.
- 3.The Assistant Director of Town Panchayats,
Collectorate Buildings,
Nagercoil, Kanyakumari District- 629 001.
- 4.The Executive Officer,
Kappiyarai Town Panchayat, (Second Grade),
Kappiyarai, Kanyakumari District

Respondents in WP (MD) .Nos.3003,3004,3005 and 3007 of 2020

- 1.The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai-600 009
- 2.The Director of Town Panchayat,
Town Panchayat Directorate,
MRC Nagar, Raja Annamalaipuram,
Chennai-600 028



3.The Assistant Director of Town Panchayat,
Collectorate Building,
Nagercoil,
Kanyakumari-629 001

4.The Executive Officer,
Neyyoor Secondary Grade Town Panchayat,
Neyyoor Post-629803,
Kanyakumari District 629 803

Respondents in WP(MD).Nos.3883, 3889, 3893 and 3904 of 2020

1.The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai-600 009

2.The Director of Town Panchayat,
Town Panchayat Directorate,
MRC Nagars, Raja Annamalaipuram, Chennai-600 028

3.The Assistant Director of Town Panchayat,
Collectorate Building,
Nagercoil, Kanyakumari Dist-629 001

4.The Executive Officer,
Pacode Town Panchayat,
Kanyakumari District.

Prayer in WP(MD).Nos.1465,1481,1468,1472 and 1473 of 2020

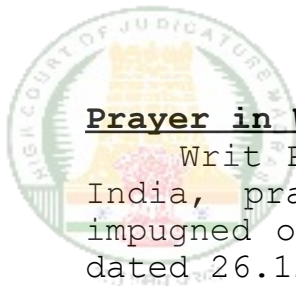
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court call for the records pertaining to the order passed in Na.Ka.No.1378/2019 dated 20.12.2019 by the 4th respondent and quash the same as illegal.

Prayer in WP(MD).Nos.1531, 1533 and 1584 of 2020

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court call for the records pertaining to the order passed in Na.Ka.No.300/2019/A1 dated 31.12.2019 by the 4th respondent and quash the same as illegal.

Prayer in WP(MD). 2020/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To Call for records pertaining to the order passed in Na.Ka.No.346/2019 dated 03-01-2020 by the 4th Respondent and quash the same as illegal.



Prayer in WP (MD) .Nos.3003,3004,3005 and 3007 of 2020

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court call for the records relating to the impugned order passed by the 4th respondent in Na.Ka.No.342/2019/A1 dated 26.12.2019 and quash the same as illegal.

Prayer in WP (MD) .Nos.3883, 3889, 3893 and 3904 of 2020

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court call for the records pertaining to the order passed in Na.Ka.NO.332/2019/A1 dated 7.2.2020 by the 4th respondent and quash the same as illegal.

Respondents appearance in WP(MD)Nos.1531, 1533 and 1584 of 2020

For Petitioner : Mr.K.P.Krishna Doss
(in all WP's)

For Respondents : Mr.Veera Kathiravan
in **WP (MD) Nos.1531 of 2020** Additional Advocate General,
Asst by Mr.G.V.Vairam Santhosh
Additional Government Pleader

For Respondents : Mr.Veera Kathiravan
in **WP (MD) Nos.3003,** Additional Advocate General,
3004, 3005 & 3007 of 2020 Asst by Mr.J.Ashok
Additional Government Pleader

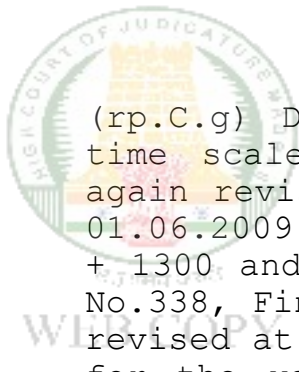
For Respondents : Mr.Veera Kathiravan
in **WP (MD) Nos.1465,** Additional Advocate General,
1481, 1468, 1472, 1533 Assisted by Mr.S.Shaji Bino
1584, 1473, 3883, 3889 Special Government Pleader
3893, 3904 & 2020 of 2020

COMMON ORDER

The issues involved in these Writ Petitions are one and the same and therefore, these Writ Petitions are heard together and disposed of by way of this common order.

2. These writ petitions have been filed as against the orders of the fourth respondent fixing the scale of pay of these petitioners' lower than the earlier pay granted to the petitioners' and for passing an order for recovery from the petitioners.

3. The Petitioners were initially paid on consolidated pay and as per G.O(MS)No.60, Rural Development and Special Grade Panchayat

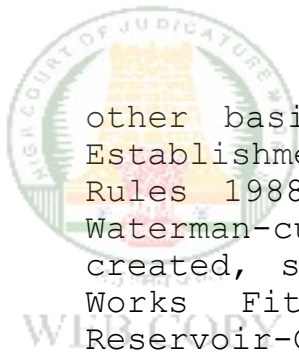


(rp.C.g) Department, dated 23.06.2006 they were brought under the time scale of pay as Rs.2550-55-2660-60-3200. Their salary was again revised as per G.O.Ms.No.234 and 25 Finance Department, dated 01.06.2009 and refixed in the year 2009 at the rate of Rs.4800-10000 + 1300 and further revision was also granted based on the G.O.(Ms) No.338, Finance Department, dated 26.08.2010 and the salary has been revised at Rs.7,300/-. The Audit of the Panchayat account was held for the year 2015-16 and an objection was raised that the salary fixed for these petitioners as per G.O.(MD)No.338, Finance Department, dated 26.08.2010 is excess. Based on the Audit objection, the fourth respondent vide impugned proceedings dated 20.12.2019 revised the scale of pay and also ordered to recover the excess amount of salary which the petitioners are getting from 01.10.2010 onwards.

4. The learned counsel appearing for the petitioners submitted that the impugned order has been passed without issuing any notice to the petitioners and their right accrued on them has been taken away and without giving any opportunity of hearing, the salary was fixed based on the orders of the Government and that too, for the year 2010 that has been revised in the year 2019 without providing an opportunity to the petitioners and there is no misrepresentation on the part of the petitioners and therefore, it cannot be recovered and the order of recovery is against the guidelines of the Hon'ble Supreme Court of India in ***State of Punjab and others vs. Rafiq Masih (While Washer) and others reported in 2015(4) Supreme Court Cases 334.***

5. The learned Additional Advocate General appearing for the respondents submitted that the Town Panchayats were originally under the Rural Development Department and governed by the Tamil Nadu Panchayat Act 1958. A separate Directorate of Town Panchayat was established by G.O.Ms.No.828, Rural Development and Local Administration Department, dated 07.05.1981. Thereafter, the Town Panchayat were brought under the Tamil Nadu District Municipalities Act, 1920. As per Rule-7 of the Tamil Nadu Town Panchayat Establishment Rules 1988, each Town Panchayat shall constitute a separate Unit for Appointment, Reversion and Discharge of Probationers or Approved Probationers or Full Members for the Non-Provincialised posts. Certain non provincialised posts, such as, Pipe Line Fitter Gr.I, Water Supply Fitter, Pubmp Mechanic, Pump Operator and Tube Well Mechanic, Meter Reader, Electricians and Tractor Driver were appointed by the respective Panchayats. Certain other posts were also established vide G.O.Ms.No.205, Rural Development Department, dated 23.03.1989.

6. According to the learned Additional Advocate General, certain qualifications have been prescribed to these categories, such as, I.T.I., certificate or technical qualifications or some experience in the technical work. Apart from these posts, certain



other basic services are also invited under the Town Panchayat Establishment (qualification and recruitment of official assistant) Rules 1988, such as Gardner, Watchman, Watchman-cum-Gardener and Waterman-cum-Watchman Turncook. Certain other posts were also created, such as, Tap Inspector Helper, Filter Bed Operator, head Works Fitter, Pipeline Fitter, Over Head Tank/Ground level Reservoir-Operator/Watchman, Motor Operator, Water Supply Maintenance/Attender, Hand Pump Maintenance/Attender vide G.O.Ms.No.198, MA & WS (Na.Pa-3) Department, dated 26.10.1998 and 5.5.1998 respectively.

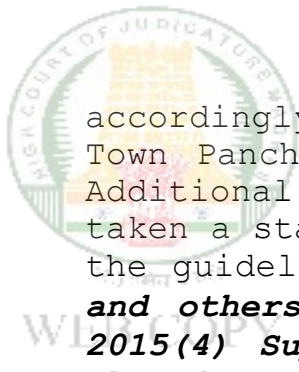
7. Based on the representations of various service Associations for pay anomaly among basic employees of the Town Panchayat, One Man Commission was appointed by the Government vide G.O.Ms.No.444, Finance (PC) Department, dated 26.08.2010. This One Man Commission considered the representations of the various Associations and submitted a report to merge the Unskilled and Semi-Skilled workers. The One Man Commission has also considered the request of the technical employees appointed with ITI certificate/practical experience in the respective trades and recommended to rationalize the trade posts with revision in their scales of pay and change of nomenclature of the posts. The recommendations of the One Man Commission was also accepted by the Government vide G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010.

8. Accordingly, the Government revising the scales of pay of the Technical Categories (Trade Posts) in all Government/Local bodies in an uniformed manner and redesignated. The Trade Posts have been redesignated as Unskilled and the Government has also directed that the Trade Posts with practical experience I.e., the category of Unskilled Assistants shall become defunct as and when the existing incumbents vacates the posts. Further, direction was also issued to all the Government Departments/Local bodies shall be made to the post of Skilled Assistant Grade-II (entry level posts) from among the I.T.I. certificate holders. The scale of pay to these unskilled Trade posts were also fixed as Rs.5200-20200+GP 1900. Based on the certain representations, a clarification was also issued by the Director of Town Panchayat in Na.Ka.No.21256/2012/A3, dated 10.06.2013 as follows:-

"5. Other Trade Posts in the pre revised scale pay of Rs.2750-4400/- Rs.2650-4400/-Rs.2610-3540/- Rs.2550-3200 redesignated as Unskilled.

Helper (Street Light Maintenance), Helper (Water Supply), OHT Operator, Motor Operator, Watchman, Water Supply maintenance operator, Hand Pump maintenance, Turn cock, Pump Cleaner- Educational Qualification-8th std.,"

9. Accordingly, these petitioners, who have been appointed as Water Tank Operator, have also been refixed in the sale of pay and <https://hcservices.courts.gov.in/hcservices> has been deducted in the Audit objection and

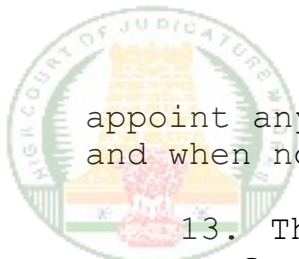


accordingly, revised clarification have been made by the Director of Town Panchayat on 07.10.2020 in Na.Ka.No.1222/2020/A3. The learned Additional Advocate General submitted that the Government has also taken a stand as per the order of the Hon'ble Supreme Court. As per the guidelines issued by the Hon'ble Apex Court in ***State of Punjab and others vs. Rafiq Masih (While Washer) and others reported in 2015(4) Supreme Court Cases 334*** case, the excess amount which was already paid has not been recovered.

10. This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

11. These petitioners are appointed as Over Head Tank Operator and other posts and they are Unskilled employees. The Unskilled employees were appointed in the basic service with educational qualification of 8th standard. Certain Unskilled employees, who are having experience, were posted in a non-provincialised posts, such as, Helper, Watchman, OHT Operator, Pump Operator, Water Supply Maintenance and Hand Pump Maintenance, Even though, they do not possess the required qualifications of ITI certificate. However, depending upon their experience, the basic servants were utilised in non-skilled post. The One Man Commission appointed based on the representations of various service Associations, has recommended to merge Unskilled and Semi-Skilled workers. The One Man Commission has also considered the request of the Technical Employees appointed with I.T.I. Certificate/practical experience in the respective trades and recommended to rationalize the trade posts with revision in their scales of pay and change of nomenclature of the posts. The Government has also accepted the recommendation vide G.O.Ms.No.338, Finance Department, dated 26.08.2010 and refixed the scale of pay as 5200-20200+2800. In the said Government Order, the Government also direct that the trade posts with practical experience i.e., the category of Unskilled Assistants shall become defunct as and when the existing incumbents vacates the posts.

12. However, the scale of pay which has been provided to the Unskilled trade posts was also extended to all the Unskilled employees, such as, OHT operator, Watchman etc., by a clarification of the Director in Na.Ka.No.21256/2012/A3, dated 10.06.2013. This mistake committed by the Department is now rectified pursuant to the Audit objection and by proceedings in Na.Ka.No.1222/2020/A3, dated 07.10.2020 & 09.10.2020. Admittedly, these petitioners are not having any qualifications of ITI and they have not served in any Unskilled trade posts and therefore, they are not entitled for a scale of pay as fixed for trade post which requires a qualification of ITI. The benefit which was granted to few section of basic servants who served on experience in the unskilled trade post cannot be ground to extend the benefit to all the basic servants. The One Man Commission which extend the benefit to the section of basic servants who worked in the unskilled trade post recommended not to



appoint any other person without qualifications in the Trade post as and when no present occupants vacate.

13. The Hon'ble Apex Court in **Chandi Prasad Uniyal & Ors vs. State of Uttarakhand & Ors reported in 2012(5) LW 713** has held that any excess payment of public money which is a tax payers money is liable to be recovered. However, in the subsequent decision of the Full Bench of the three Judges Bench of the Hon'ble Apex Court in **State of Punjab and others vs. Rafiq Masih (While Washer) and others reported in 2015(4) Supreme Court Cases 334** has laid down certain guidelines as follows:-

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

14. As per the order of the Hon'ble Supreme Court, recovery from the Group-C and Group-D services is impermissible and recovery of excess payment made for a period of excess 5 years before the order of recovery is also not permissible. These petitioners fall under the Group-D and the benefits have been extended to these petitioners for more than 5 years and therefore, recovery cannot be made as against these petitioners and the Government by realising the same and by following the orders of the Hon'ble Apex Court, has also clarified in the subsequent clarification of revision of scale of pay on 07.10.2020.

15. Accordingly, all the writ petitions are allowed and there shall be recovery of the amount which has been granted to



the petitioners. However, the petitioners are liable to be revised in the scale of pay according to his posts. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

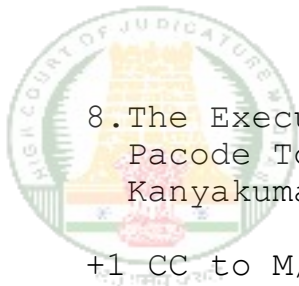
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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Municipal Administration and Water Supply Department,
Fort St. George,
Chennai-600 009.
- 2.The Director of Town Panchayat,
Town Panchayat Directorate,
M.R.C.Nagars, Raja Annamalaipuram,
Chennai-600 028.
- 3.The Assistant Director of Town Panchayats,
Collectorate Buildings,
Nagercoil, Kanyakumari District,
PIN 629 001.
- 4.The Executive Officer,
Killiyoor Town Panchayat,
Killiyoor, Kanyakumari District.
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Keezhkulam Town Panchayat,
Keezhkulam, Kanyakumari District.
- 6.The Executive Officer,
Kappiyarai Town Panchayat,
Kappiyarai, Kanyakumari District.
- 7.The Executive Officer,
Neyyoor Secondary Grade Town Panchayat,
Neyyoor Post-629803,
Neyyoor, Kanyakumari District 629 803.

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8.The Executive Officer,
Pacode Town Panchayat,
Kanyakumari Disrict.

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KMV(CO)

GC(17.12.2021) 10P 10C