



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

**DATED: 19.11.2021**

**CORAM:**

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH**

W.P. (MD)No.669 of 2018

and

W.M.P. (MD)No.696 and 14288 of 2018

R.Jeyaparakash

...Petitioner

/Vs./

The Executive Officer,  
Palamedu Town Panchayat,  
Madurai,  
Madurai District.

...Respondent

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to impugned order No.1/2017 dated 30.10.2017 of the respondent and quash the same.

For Petitioner : Mr.T.S.MohamedMohidheen

For Respondents : Mr.VeeraKathiravan  
Additional Advocate General  
Assisted by  
Mr.K.S.Selvaganesan  
Additional Government Pleader

**ORDER**

The petitioner was appointed as a Water Supply Assistant on 28.03.2008 by the Palamedu Town Panchayat, the sole respondent, on compassionate grounds in place of his father, who had passed away in harness on 18.12.2006, while serving in the same post.

<https://hcservices.ecourts.gov.in/hcservices/>



2.G.O.Ms.No.10, Finance (Pay Cell) Department, dated 13.01.2009 fixed the salary of the petitioner at a sum of Rs.5,891/- under proceedings dated 28.01.2009. Thereafter, G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009 came to be issued, as per which, the petitioner's salary was fixed at sum of Rs.4,800 - Rs.10,000 with grade pay of Rs.1,300, payable from date of his appointment ie., from 28.03.2008.

3.Under proceedings dated 30.06.2009, the scale of pay was revised to include grade pay, as a result that the fixation of pay was at Rs.5,200 - 20,200 + 1,900. In 2012 the pay was revised and the petitioner sought and was granted the benefit of such revision. The petitioner has admittedly been receiving the revised pay, as aforesaid, including incentive, from 01.08.2010, uninterruptedly.

4.While this was so, impugned proceedings dated 17.10.2017, 30.10.2017 & 11.01.2018 came to be issued, seeking to recover the amounts allegedly paid in excess to the petitioner, for the period from 01.08.2010 to 30.09.2017 from his monthly salary in 40 installments from November, 2017.

5.The petitioner's contentions in regard to the impugned order are that:

(i) the order has been passed without prior notice / show cause notice (SCN),

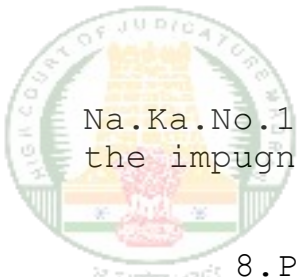
(ii) impugned proceedings refer to an audit objection that was not made available to the petitioner,

(iii) the revision was made at the instance of the State, and unilaterally, and finally,

(iv) that the petitioner, a Grade D employee would be severely inconvenienced by virtue of the proposed recovery. In this context, he relies upon the Judgment of the Hon'ble Supreme Court in the case of *State of Punjab and others vs. Rafiq Masih* (2015 (4) SCC 334) (in short '2015 Whitewasher's case') and the guidelines for recovery set out therein.

6.At the time of admission of this writ petition, the petitioner had sought and obtained an interim stay of all further proceedings pursuant to impugned order on 11.01.2018, in force till date.

7. Mr. Veera Kathiravan, learned Additional Advocate General appearing for Mr. K.S. Selvaganesan, learned Additional Government Pleader for the sole respondent straightaway places for my appreciation, proceedings of the Director of Municipalities in



Na.Ka.No.1222/2020/A3 dated 07.10.2020, modifying the impact of the impugned orders substantially.

8.Proceedings dated 07.10.2020 adopts and applies the dictum laid down by the Hon'ble Supreme Court in *Whitewasher's* case (supra), as a result that the recovery of the amounts allegedly paid in excess to the petitioner till 01.10.2020, has been dropped. However, the refixation of the salary remains, with effect from 01.10.2020.

9.As regards the submission of the petitioner relating to violation of the principles of natural justice, the respondent would argue that the petitioner is, in fact, receiving the salary sanctioned as per entitlement in G.O.338, Finance (Pay Cell) Department, dated 26.08.2010.

10.According to him, a clarification had been provided under Letter bearing R.O.C.No.45529/F3/2010-1 dated 01.10.2012, that constitutes an aberration as it deviates from the terms originally granted to the employees, including the petitioner, and is liable to be eschewed in toto. It is for this reason that proceedings came to be issued in 2015 in letter No.45529/F3/2010 dated 21.05.2015 by the Commissioner of Municipal Administration reversing the erroneous stand taken by the authorities in 2012.

11.The payments sanctioned in the interim ie., between 2010 and 2017 constitute the commission, and thereafter, perpetration of an error and subsequent correction of the same. The intervening events fall under the realm of executive action and the impugned order passed in 2017 merely puts the petitioner back in the same status, the appropriate one, when his salary was initially fixed in 2010.

12.There is thus no error in the impugned order and the petitioner is also not liable to be heard, in regard to the fixation of his salary as the petitioner and other similarly placed employees had furnished an undertaking at the time of revision in 2012 to the effect that they would repay the incentive, if it was found to have been granted to them in error or was contrary to the Rules. No such undertaking has been produced before the Court.

13.He takes me through the following judgments of the Hon'ble Supreme Court in the cases of:

a) *Chandri Prasad Uniyal and Ors vs. State of Uttarkhand and Ors* (AIR 2012 Supreme Court 2951);



- b) *State for Punjab and Others vs. Rafiq Masih (Whitewasher)* ((2014) 8 Supreme Court Cases 883) (3 Judge Bench ); and  
c) *State of Punjab and Others vs. Rafiq Masih (White Washer)* (Division Bench of the Supreme Court) ((2015) 4 Supreme Court Cases 334).

WEB COPY

14. In counter, the respondent refers to constitution of a one-man anomaly commission to examine the categorization of posts in the Government. Based on the recommendation of the Commission, G.O.Ms.338, Finance (Pay Cell) Department, dated 26.08.2010 was passed making a distinction between unskilled and semi-skilled employees in trade posts. Semi-skilled employees formed a separate group and were ordered to be moved to a higher scale of pay by creating what is referred to as technical posts. The pay of those in the technical posts was revised.

15. Last grade servants in Municipalities such as the petitioner were brought into fold of trade posts vide ROC.No.45529/F3/2010-1 dated 01.10.2012 and were granted pay scale at Rs.4,800 - 10,000 + grade pay of Rs.1,900. The petitioner, in accordance with aforesaid order, sought for and was granted revision of pay.

16. An affidavit was taken from the employees such that if, on a later date, the pay revisions was found to be faulty, the same would be revisited. Sanction was granted to fix notionally his pay in the aforesaid band from 11.09.2008 to 31.07.2010 and pay arrears as well as continue to pay the grade pay from 01.08.2010 onwards.

17. Since the aforesaid fixation had been found to be erroneous based on an objection of the Local Fund Audit Department, revised instructions were issued in Letter No.45529/F3/2010 dated 21.05.2015 cancelling Letter dated 01.10.2012. The post of Water Supply Assistant was removed from the list of Technical Posts, the categorization of posts qua technical and unskilled was revised and those posts removed from the ambit of 'technical posts' were reverted back to their old scale of pay under G.O.Ms.234, Finance (Pay Cell) Department, dated 01.06.2009. To add insult to injury, recovery of the amounts paid to them was also ordered.

18. Heard learned counsel and perused the files, GO's and case-law cited. The facts in regards to the petitioner's employment are admitted. The issue that arises for resolution is the veracity or otherwise of impugned orders reversing the re-fixation of pay and grant of monetary benefit to the petitioners

<https://hcservices.accounts.gov.in/hcservices/>



and ordering recovery of the same. In this connection, a discussion of the relevant Government Orders and communications would be instructive.

19.The fixation of pay was made under G.O.(Ms.)No.234, dated 01.09.2009 and this is undisputed.The petitioners neither sought nor solicited any enhancement of the same. The State appointed a one-man Commission to examine and make recommendations for proper categorization of posts in all local bodies, in a uniform manner and scales of pay appropriate thereto.

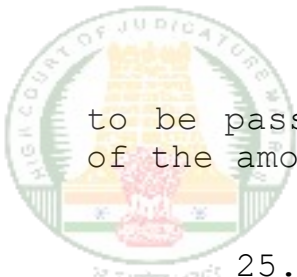
20.The recommendations of the Commission had come to be accepted by the State in G.O.(Ms).No.33B Finance (PC) Department dated 26.08.2010, that issued Letter dated 01.10.2012 bearing Roc.No.45529/F3/2010-1categorising posts as technical and non-technical and granting a pay revision in regard to the former, such posts being described in detail in the Annexure to that Letter.It is at this juncture that, according to respondents, an error has come to be committed by the Commissioner of Municipal Administration.

21.What appears to have transpired, according to the respondents, is that in the Annexure to the aforesaid letter that categorises the posts for the purposes of the pay revision, certain categories that did not qualify as technical services, come to be included and granted benefit. The annexure categorises the posts in five categories being Supervisor Posts, Special Grade Trade Posts, Grade I (Promotion Posts), Grade II Entry Level Posts and other Trade Posts.

22.In other words, though the communications states that only technical posts were to be covered within the ambit of the pay revision/enhancement, excluding non-technical posts such as office assistant, sweeper, scavenger etc., some non- technical posts have come to be inadvertently included. The post of Water Supply Assistant held by the petitioner herein is one such post.

23.This mistake was not noticed till 2015, when benefit of pay revision granted erroneously to non-technical posts was directed to be reversed under proceedings bearing No. Re.Lr.No.45529/F3/2010 dated 21.05.2015.

24.The petitioners were not privy to either the 2012 proceedings giving them the benefit, though they would admit that they have been beneficiaries of the pay revision, nor the 2015 proceedings under which the said benefit was withdrawn. Upon implementation of the 2015 reversal, the impugned order has come



to be passed giving effect to the reversal and ordering recovery of the amounts paid to them, albeit, and allegedly, in error.

25. It is in the context of the aforesaid factual matrix that the rival contentions of the parties are to be appreciated and decided. At the outset, I proceed to discuss the cases cited at the Bar.

26. In *Chandi Prasad Uniyal's* case, a Division Bench of the Hon'ble Supreme Court dealt with the question as to whether an amount paid in excess due to wrong fixation of scale of pay based on the Pay Commission Report could be recovered from the teachers.

27. A Division Bench of the Uttarakhand High Court had rejected the plea of the teachers taking the view that since the excess payments had been made due to a mistake committed by the authorities, the amounts were liable to be recovered. The admitted position is that while the authorities had committed an error in making excess payment, there was no fraud or misrepresentation committed by the employees and this was the bulwark of their case before the court.

28. To summarize the rival contentions, the teachers contended that they had neither sought nor demanded the payments given to them and had received them bonafide. Hence, they should not be subject to recovery, whereas the authorities contended that the excess payments were due to a bonafide mistake on their part, not compelled by any extraneous factors and hence the State and the tax payers should not be made to suffer.

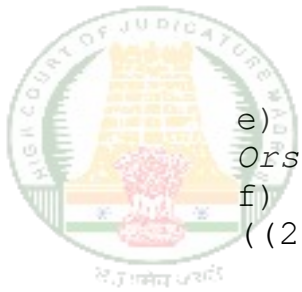
29. The Court also noted that at the time of re-fixation of pay, a condition had been imposed upon the recipients to the effect that if the re-fixation was found, at a future date, to be irregular or erroneous, the concerned institution shall be responsible for recovery of the amount paid in excess. The following judgments rendered earlier by the Hon'ble Supreme Court in the context of recovery of excess payment were also discussed:

a) *Shyam Babu Verma vs. Union of India* ((1994) 2 SCC 521);

b) *Sahib Ram v. State of Haryana* (1995 Supp (1) SCC 18);

c) *State of Bihar vs. Pandey Jagdishwar Prasad* ((2009) 3 SCC 117);

d) *Yogeshwar Prasad and Ors. vs. National Institute of Education Planning and Administration and Ors.* ((2010) 14 SCC 323);



- e) *Col. B.J. Akkara (retd.) vs. Government of India and Ors.* ((2006) 11 SCC 709); and  
f) *Syed Abdul Qadir and Ors. vs. State of Bihar and Ors.* ((2009) 3 SCC 475).

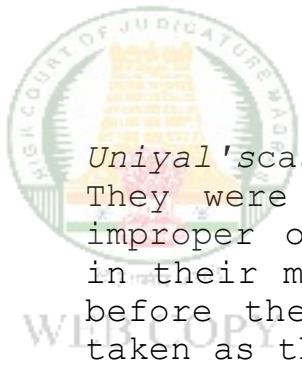
30. The above cases were distinguished by the Hon'ble Bench on various grounds. In Shaym Babu Verma's case, three judges of the Hon'ble Supreme Court held that the revision was erroneous but since the recovery and refixation was after eleven years from the original fixation of pay, the sudden reduction of pay scale, and that too, after many years, would not only affect the employees financially, but their seniority as well. They thus held that it would not be just or proper to recover the excess amount paid.

31. In *Sahib Ram's* case, the employees therein had not possessed the required education qualifications for the relaxation that had been granted to them. However, the relaxation having been granted and salary having been paid based on such regularisation, it was concluded that excess payment should not be recovered applying the principles of equal pay for equal work.

32. In *Yogeshwar Prasad's* case, the Bench had opined that recovery should not be resorted to unless it was a case of misrepresentation or fraud by the employee concerned. The observations of the Hon'ble Supreme Court in the case of *Col. B.J. Akkara* (supra), were extracted to the effect that the restraint placed on recovery has its basis on the exercise of judicial discretion to relieve the employees from such hardship as will be caused by the recovery and not for the reason that the court believes that the employees have any vested right to the amounts that they have been paid in excess. Thus, the *sine qua non* for such recovery is the hardship caused to the employee and no other reason.

33. Then again, three Judges of the Hon'ble Supreme Court in *Syed Abdul Qadir's* case reiterated the same opinion as in the case of *Col. B.J. Akkara*, noting, as an additional factor, that the teachers from whom recovery was sought to be made had either retired or were on the verge of retirement.

34. The aforesaid cases were distinguished in *Uniyal's* case, the Hon'ble Bench noticing that the relief granted as against recovery had been in the peculiar circumstances of those cases, such as prejudice or the hardship that would be caused to these employees, either by reason of the long distance of time between the refixation and recovery or they having retired or being imminent for retirement.



35. Since those circumstances did not arise in *Uniyal*'s case, the Bench was not inclined to follow their ratio. They were concerned with the deployment of public money in an improper or inappropriate manner. This question being uppermost in their minds, they concluded that the categories of cases cited before them involved exceptional circumstances but could not be taken as the norm.

36. The conclusion was that recovery, once made, of amounts admittedly erroneously paid to an employee, must be confirmed except if the recovery fell within the category of exceptional circumstances as enumerated above. In that case, the order of recovery was confirmed.

37. Since there appeared to be a cleavage of opinion between the decisions of the Hon'ble Division Benches in the cases of *Shyam Babu Verma* and *Sahib Ram* on the one hand, and *Chandi Prasad Uniyal* on the other, the question of recovery of excess payments came to be referred to a larger Bench of the Hon'ble Supreme Court, comprising three judges.

38. By a decision dated 18.12.2014, the question was answered by the larger Bench, that held that there was really no dichotomy at all as contemplated. The matters were thus returned holding that there was no question of law to be decided. The Bench noted that in *Chandri Prasad Uniyal*'s case, the relief had been granted in terms of Article 136 of the Constitution of India, whereas in the cases of *Shyam Babu Verma* and *Sahib Ram*, the relief had been granted in terms of Article 142 of the Constitution.

39. The scope and ambit of the two judgments was thus entirely different and this is what the Hon'ble Bench says in conclusion at paragraphs 8 to 14:

"8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the concerned employee. If the effect of the recovery from the concerned employee would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's



right would outbalance, and therefore eclipse, the right of the employer to recover.

9. The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality, can be found in Articles 14 to 18, contained in Part III of the Constitution of India, dealing with "Fundamental Rights". These Articles of the Constitution, besides assuring equality before the law and equal protection of the laws; also disallow, discrimination with the object of achieving equality, in matters of employment; abolish untouchability, to upgrade the social status of an ostracized section of the society; and extinguish titles, to scale down the status of a section of the society, with such appellations. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39A, 43 and 46 contained in Part IV of the Constitution of India, dealing with the "Directive Principles of State Policy". These Articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice - social, economic and political, by inter alia minimizing monetary inequalities, and by securing the right to adequate means of livelihood, and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections.

10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.



11. For the above determination, we shall refer to some precedents of this Court wherein the question of recovery of the excess amount paid to employees, came up for consideration, and this Court disallowed the same. These are situations, in which High Courts all over the country, repeatedly and regularly set aside orders of recovery made on the expressed parameters.

12. Reference may first of all be made to the decision in *Syed Abdul Qadir v. State of Bihar*, (2009) 3 SCC 475, wherein this Court recorded the following observation in paragraph 58:

"58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Ram v. State of Haryana*, 1995 Supp. (1) SCC 18, *Shyam Babu Verma v. Union of India*, (1994) 2 SCC 521, *Union of India v. M. Bhaskar*, (1996) 4 SCC 416, *V. Ganga Ram v. Director*, (1997) 6 SCC 139, *Col. B.J. Akkara (Retd.) v. Govt. of India*, (2006) 11 SCC 709, *Purshottam Lal Das v. State of Bihar*, (2006) 11 SCC 492, *Punjab National Bank v. Manjeet Singh*, (2006) 8 SCC 647 and *Bihar SEB v. Bijay Bahadur*, " (emphasis supplied)

13. First and foremost, it is pertinent to note, that this Court in its judgment in *Syed Abdul Qadir's* case (*supra*) recognized, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any



WEB COPY

recovery. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee.

14. In this context, reference may also be made to the decision rendered by this Court in *Shyam Babu Verma v. Union of India* (1994) 2 SCC 521, wherein this Court observed as under:

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which



WEB COPY

has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

(emphasis supplied)

It is apparent, that in *Shyam Babu Verma's* case (*supra*), the higher pay- scale commenced to be paid erroneously in 1973. The same was sought to be recovered in 1984, i.e., after a period of 11 years. In the aforesaid circumstances, this Court felt that the recovery after several years of the implementation of the pay-scale would not be just and proper. We therefore hereby hold, recovery of excess payments discovered after five years would be iniquitous and arbitrary, and as such, violative of Article 14 of the Constitution of India."

40. The ratio to be gleaned is that the facts and circumstances of every case have to be examined and appreciated on their own merit to discern whether the re-fixation and recovery in question was warranted or justified. Exceptional circumstances that call for complete justice must be taken note of while deciding the fate of the action initiated.

41. The take-away thus, is that the duty of the Court must be to balance whether the re-fixation and recovery ordered is iniquitous or unfair on the one hand or whether the corresponding right of the employer to recover the amount is greater on the other hand, in effect, whether the recovery has '*a harsh and arbitrary effect on the employee*'. In deciding so, the Court must bear in mind that the concerned employee would normally not have any vested right in the excess amount received by him. It is upon an application of those principles that the present case must be decided.

42. In the case of *State of Punjab and Others v. Rafiq Masih (White Washer)* ((2015) 4 Supreme Court Cases 334), the Hon'ble Supreme Court was concerned yet again with a challenge to recovery effected in the case of Grade C/Grade D employees and in that context had issued a set of guidelines in addressing situations of recovery from employees. The guidelines are as below:

<https://hcservices.ecourts.gov.in/hcservices/> 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

WEB COPY

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

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

(iii) Recovery from 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.

19. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.

20. The appeals are disposed of in the above terms."

43. It is based upon the above judgement that the decision under letter dated 07.10.2020 has been arrived at, deciding to waive the recovery for the past period, and fixing the effective date of re-fixation of the salary as 01.10.2020 onwards. In light of the discussion in the preceding paragraphs, and the decision of the State in proceedings dated 07.10.2020, the recovery sought to be effected/or effected, till date, is liable to be set aside and I do so.

44. I now come to the question of re-fixation of the salary with effect from 07.10.2020. Salary was originally fixed in terms of G.O. 234, Finance (Pay Cell) Department, dated 01.06.2009. In 2010, the recommendations of the one-man Commissions were accepted and directed to be implemented as below:



G.O.(Ms) Revised Scales of Pay, 2009 - Revision of scales of pay and re-designation of Technical Categories (Trade Posts) - Implementation of the recommendations of One Man Commission - Orders - Issued.

WEB COPY

-----**FINANCE (PAY CELL) DEPARTMENT**-----**G.O.Ms.No.338**

Dated: 26-8-2010.

Aavani, 10.

ThiruvalluvarAandu, 2041.

Read :-

- 1) G.O.Ms.No.234, Finance (PC) Department,dated:01-06-2009
- 2) G.O.Ms.No.444, Finance (PC) Department,dated:09-09-2009.

\*\*\*\*\*

**ORDER :--**

In the G.O. second read above the Government constituted One Man Commission to examine anomalies, if any, consequent on the implementation of the recommendations of the Official Committee 2009. Various Service Associations have represented before the One Man Commission to revise the scales of pay of Grade-I and Grade-II Trade Posts, Special Trade Posts and Supervisory Trade Posts and also to bring all the technical posts into four groups and designate them as Junior Technical Officer, Assistant Technical Officer, Technical Officer and Supervisory Technical Officer.

2) The One Man Commission has examined the requests of various associations following the decision of Government of India to merge the Unskilled and Semi-Skilled Workers. The One Man Commission has also considered the request of the Technical Employees appointed with L.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 as shown below:--

..... .

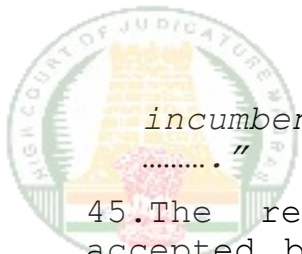
3) The Government has carefully examined the above recommendations of the One Man Commission and decided to accept the same. Accordingly, Government direct that the scales of pay of the Technical categories (Trade posts) in all Government departments / Local bodies shall be uniformly revised and re-designated as shown below:

| Sl.No. | Name of the Posts                                                                                                                                                        | Existing Scale of Pay + Grade Pay                                                         | Revised scale of pay + Grade Pay |
|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|----------------------------------|
|        |                                                                                                                                                                          | Rs.                                                                                       | Rs.                              |
| (1)    | (2)                                                                                                                                                                      | (3)                                                                                       | (4)                              |
| 1.     | Supervisory posts in the pre-revised scale of pay of Rs.4500-7000 <b>re-designated as Supervisor</b>                                                                     | 5200-20200 +<br><b>2800</b>                                                               | 9300-34800<br><b>+4200</b>       |
| 2.     | Special Grade Trade Posts in the pre-revised scale of pay of Rs.4300-6000 <b>re-designated as Special Artisan</b>                                                        | 5200-20200 +<br><b>2600</b>                                                               | 5200-20200 +<br><b>2800</b>      |
| 3.     | Grade-I (promotion posts) in the pre-revised scale of pay of Rs 4000-6000 <b>re-designated as Skilled Assistant Grade-I</b>                                              | 5200-20200 +<br><b>2400</b>                                                               | 5200-20200 +<br><b>2600</b>      |
| 4.     | Grade-II (entry level posts) in the pre-revised scale of pay of Rs.3050 4590 <b>re-designated as Skilled Assistant Grade-II</b>                                          | 5200-20200 +<br><b>1900</b>                                                               | 5200-20200 +<br><b>2000</b>      |
| 5.     | <b>Other Trade Posts</b><br>in the pre-revised scales of pay of<br>Rs. 2750-4400<br>Rs. 2650-4000<br>Rs. 2610-3540<br>Rs. 2550-3200<br><b>re-designated as Unskilled</b> | 5200-20200<br>+1800<br>4800-10000<br>+1650<br>4800-10000<br>+ 1400<br>4800-10000<br>+1300 | 5200-20200 +<br><b>1900</b>      |

4) 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. Further all future recruitments to the trade posts in all Government departments / Local

<https://hcservices.eports.gov.in/hcservices/>

Recruitment shall be made to the post of Skilled Assistant Grade-11 (entry level posts) from among the I.T.I certificate holders only by giving due protection to the existing



incumbents.

45.The recommendations of the one-man commission were thus accepted by the government and sought to be implemented in 2012 and the Letter is extracted herein in full, for clarity in appreciation of the events:

32.5.தொழில் நுட்ப/தொழில் நுட்ப பதில் லாபபணியாளர் களுக்கு குவாண்டிமாற்றம்.

From

....

LETTER Roc. No. 45529/ F3 / 2010-1 DATED: 01-10-2012

Sub: Revised Scales of Pay 2009-Municipalities-revision of scales of pay and re-designation of Technical categories (Trade Posts) implementation of One Man Commission - Government Orders issued-instructions issued -regarding.

.....

In the reference 4<sup>th</sup> cited, Government have clarified that no other orders have been issued in respect of technical categories and therefore the orders in Government Order may be implemented excluding the non-technical posts such as Office Assistant, Sweeper, Scavenger etc.,

Hence, all the pay fixing authorities of Municipal Commissioners and Regional Directors are requested to revise the scales of pay to the technical categories as Annexed in this letter, pending issue of amendment in the relevant service rules for redesigning the Trade posts from the Government Order.

....."

#### ANNEXURE

Tamil Nadu Municipal Engineering Subordinate Service Rules, 1970

| Sl.No.Name of posts | As per GO (Ms) No.23 4/dated: 01-06-2009 Scale of Pay (Rs.) | As per G.O. (Ms) No. 338/dated: 26.08.2010 Revised scale of pay (Rs.) | As per Government letter no. 63305/Pay Cell/2010 Finance dated.08-11-2010 | Selection Grade scale of pay (Rs.) |
|---------------------|-------------------------------------------------------------|-----------------------------------------------------------------------|---------------------------------------------------------------------------|------------------------------------|
| .....               |                                                             |                                                                       |                                                                           |                                    |

**5. Other Trade posts** (in the pre-revised scale of pay Rs.2750-4400/Rs.2650-4000/Rs.2610-3540/Rs.2550-3200)

Works Inspector/Wireman Helper/ Avenue Maistry, /Pipe Line Maistry/Turn Cock/Fountain Cleaner / Helper/ Gang Mazdoor / Alum Worker/Tank Watchman / Park Watchman / Gardener/Travellers Bangala Matty / Motor Cleaner/Fitter Helper/Turner Helper / Mechanic Helper / Fitter Mates / Hammerman / Power House Mazdoor/Oiler (Oil Mazdoor) / Fitter Mazdoor / Chain Ma Engineering Last Grade Servant /Gank Coolies/Cleaner / Head Works Watchman / Reservoir Watchman/Avenue Mazdoor/Spring Watchman / Water Supply Helper / Care Taker /Tank Cleaner/Water Supply Assistant/ Pipe Line Cleaner / Pump Cleaner / Headworks Assistant / Pump House Cleaner/Reservoir Cleaner/Filter beed Cleaner/Water Supply Watchman/Chanel peoen/Avenue Coolies / Motor Mechanic/Street Light Helper/Handpump Fitter/Pump Operator/Sewage Form Mazdoor / Drain Cleaner / Drain Maistry / Silt Puket Cleaner / Water Supply Worker /OHT Helper / Drainage Helper / Borwell Watchman / Tube mechanic Assistant / permanent NMR / Pump House Watchman / Pump Room Attender/Pipe mazdoor / Thoppu Watchman/Market Watchman/Bus Stand Watchman/Eng. Office Assistant/Lorry Cleaner/Boarding & Lodging Watchman/Weekly Market Watchman / Kalyana Mandapa Watchman/T.B. Watchman / Hand Pump Maintenance /Water Supply Maintenance

|  |                                       |                                 |                             |                         |
|--|---------------------------------------|---------------------------------|-----------------------------|-------------------------|
|  | 4800-<br>10000 +<br>GP-1650 &<br>1300 | 5200-<br>20200<br>+ GP-<br>1900 | 5200-<br>20200 +<br>GP-2400 | 5200-20200 +<br>GP-2600 |
|  |                                       |                                 |                             |                         |

(Sd/-) Ajay Yadav

for Commissioner of Municipal Administration"

According to the respondents, the categorization of employees as above was erroneous as unskilled employees came to be included as skilled employees granting them the benefit of enhanced pay.

46.The error came to be corrected in 2015 and the present impugned proceedings have been issued to re-fix the pay and recover the amounts paid in excess, based on the erroneous classification of the year 2012. The impugned re-fixation order dated 21.05.2015 is as under:

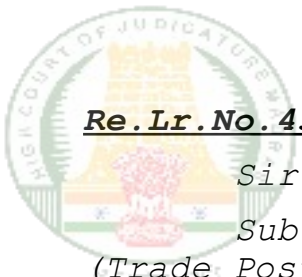
DIRECTORATE OF MUNICIPAL ADMINISTRATION

From

To

<https://hcservices.ecourts.gov.in/hcservices/>  
The Director of Municipal  
Administration,  
Chepauk, Chennai-05.

1. All Municipal Commissioners.
2. All Regional Directors of  
Municipal Administration



**Re. Lr. No. 45529/F3/2010**

**Dated: 21.05.2015**

Sir,

Sub : Municipalities-Redesignation of Technical categories (Trade Posts) and revision of scale of pay-Government orders issued- instructions already issued revised - regarding.

Ref: 1.G.O.(Ms)No.338, dated 26.08.2010.

.....

Consequent on the redesignation of various technical categories (Trade Posts) and revision of scale of pay ordered in the G.O. first cited, instructions were issued in this letter third cited redesignating various technical categories in Municipalities and to refix the scale of pay of such posts. The details of the various categories and the revised scales of pay was furnished in the Annexure to that letter.

The DLFA, in the reference fourth cited, has pointed out that certain posts classified under the category of the "other trade posts" (unskilled) in the Annexure could not be considered as technical posts as they do not involve any technical skill and therefore higher scale of pay could not be allowed to such non-technical categories. It was also informed that audit had to object the fixation of pay in the higher scale to these posts and consequently the pension proposals of the retired and retiring persons received in audit could not be admitted due to the higher pay fixation.

The matter was re-examined with reference to the Tamil Nadu Municipal Service Rules and various Government Orders on subsequent revision of scale of pay of certain technical posts. The instruction including Annexure to the letter third cited already communicated are hereby cancelled and the following orders are issued in modification of the orders issued in this office letter third cited.

The technical categories in various municipal services are grouped and redesignated and specified in the Annexure 'A' to this letter along with the details of the revised scale of pay allowed to each category.

Certain posts which were included under the category of "other trade posts" in the Annexure to this office letter third cited are now deleted from the list and a revised list of posts termed as "other trade posts" is now communicated in the Annexure.

The list of posts deleted from the Annexure to the letter third cited is furnished in Annexure 'B'.

The scale of pay for these posts should be allowed as per G.O.Ms.No.234, Finance (pay cell) Department, dated 01.06.2009.

<https://hcservices.judiciary.gov.in/hcservices/>

The technical categories mentioned in Annexure 'A' should be allowed the scale of pay in the revised scale as per instructions in the Government orders cited in Sl.No.1 and

from SI.No.6 to 8 in the reference.

The selection grade and special grade scales for these posts have to be restricted to that of the ordinary/selection grade scale of pay of the promotion posts as per the instructions in the Government letter fifth cited.

Annexure - 'B'

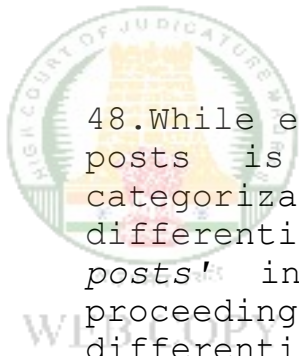
Name of posts deleted from the list Annexure-'B'

Name of posts deleted from the list of other trade posts furnished in Annexure to Letter No.45529/F3/10-1, dated:01.10.2012 of the CMA

|    |                                |    |                      |    |                              |
|----|--------------------------------|----|----------------------|----|------------------------------|
| 1  | Gnag Mazdoor                   | 13 | Tank Cleaner         | 25 | OHT Helper                   |
| 2  | Tank Watchman                  | 14 | W.S.Assistant        | 26 | Watchman                     |
| 3  | Park Watchman                  | 15 | Head works Assistant | 27 | Pumproom Attender            |
| 4  | Gardner                        | 16 | W.S.Watchman         | 28 | Thoppu Watchman              |
| 5  | T.B.Matty                      | 17 | Chanel Person        | 29 | Market Watchman              |
| 6  | Engineering last grade servant | 18 | Avenue Coolies       | 30 | Bus Stand Watchman           |
| 7  | Head works watchman            | 19 | Street Light Helper  | 31 | Engineering Office Assistant |
| 8  | Reservoir watchman             | 20 | Sewage Mazdoor       | 32 | Lorry Cleaner                |
| 9  | Avenue Mazdoor                 | 21 | Drain Clearner       | 33 | Boarding Lodging Watchman    |
| 10 | Spring Watchman                | 22 | Drain Maistry        | 34 | Weedly Market watchman       |
| 11 | Water supply Helper            | 23 | Silt pucket cleaner  | 35 | KalyanaMandabam Watchman     |
| 12 | Care Taker                     | 24 | w.s.Worker           | 36 | TB Watchman                  |

Note: The scale of pay for the above posts shall be allowed to the regular/permanent employees with reference to G.O.Ms.No.234 Finance (pay cell) dated:22.07.2013."

47.For a decision on whether the re-fixation is proper, the 2010, 2012 and 2015 proceedings are to be reconciled. A copy of audit objection has not been placed on file. However, proceedings dated 21.05.2015 refers to the objection to the effect that some certain posts classified under the category 'other trade posts' (unskilled) in the annexure to the 2012 letter cannot be considered as technical posts as they do not involve technical skill and therefore, higher category of pay cannot be granted to such categories.



48.While exercise of determining the appropriate categorization of posts is entirely within the domain of the State, such categorization must be seen to be based on proper and appreciable differentia. A comparison of the categorization of 'other trade posts' in proceedings dated 01.10.2012 and Annexure -B of proceedings dated 21.05.2015 would show that not all the posts differentiated as 'other trade posts' have been denied the effect of the pay enhancement.

49.Sixty nine (69) trade posts are covered in proceedings dated 01.10.2012 and 36 stand excluded in 2015.Upon a comparison of the two lists, I find that among those retained in the technical trade posts in the category of 'cleaners' are fountain cleaner, motor cleaner, pipe line cleaner, pump cleaner, pump house cleaner, reservoir cleaner, and filter beed cleaner, whereas tank cleaner, drain cleaner, silt pucket cleaner and lorry cleaner have been excluded.

50.Then again while tank watchman, park watchman, head works watchman, reservoir watchman, spring watchman, water supply watchman, thoppu watchman, market watchman,bus stand watchman, boarding & lodging watchman, weekly market watchman, kalyana mandapa watchman and TB watchmanstand excluded, borewell watchman and pump house watchman continue to have the benefit of increased pay.

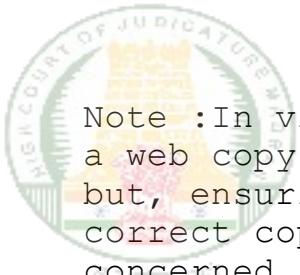
51.I am thus, at a loss to understand the basis of differentiation within the two categories as above.To my mind, the exercise has been done mechanically simply following the audit objection andthis is arbitrary. The respondents must apply their minds in a proper, scientific manner in the categorization of posts as 'skilled' and 'unskilled'prior to arriving at a decision in regard to the exclusions. Let this exercise be done forthwith, bearing in mind the duties and functions performed by all categories of employees in category 5 of proceedings issued in 2012. Impugned order dater 30.10.2017, not being based upon proper categorization of the trade/non-trade posts is set aside qua the aspect of re-fixation of pay.

52.This writ petition is disposed in the above terms. Miscellaneous Petitions closed and there is no order as to costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //



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.

## WEB COPY

To

The Executive Officer,  
Palamedu Town Panchayat,  
Madurai,  
Madurai District.

+1 CC to M/s.T.S. MOHAMED MOHIDHEEN, Advocate ( SR-35270[F] dated 19/11/2021 )

W.P.(MD)No.669 of 2018

Dated:19.11.2021

RK(20/12/2021) 21P 3C