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W.P.No.20817 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2022

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.20817 of 2022
and
W.M.P.No.19889 of 2022

C.Sankar

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Municipal Administration and Water Supply Department,
Namakkal Kavignar Maaligai,
Fort St.George, Chennai - 600 009.

2.The Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai - 600 003.

3.The Superintendent Engineer,
Greater Chennai Corporation,
Mechanical Engineering Department - North Depot,
Ripon Building,
Chennai - 600 003.

4.Assistant Executive Engineer,
Mechanical Engineering Department - North Depot,
No.61, Basin Bridge Road,
Chennai - 600 021.

... Respondents



PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the Impugned Order bearing E.Po.Thu.Va.Se.Pa.Na.Ka.No.B2/0878/2019 dated 17.02.2020 passed by the 3rd respondent and quash the same and consequently direct the 2nd respondent herein to restore the Selection Grade Pay Scale of Rs.9300-34800+4200/- notionally from 01.01.2006 and monetarily from 01.08.2010, along with consequential benefits within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Kiruthika

For Respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader
for R1

Mr.P.T.Ramadevi
Standing Counsel
for R2 to R4

ORDER

This Writ Petition has been filed challenging the order dated 17.02.2020 passed by the third respondent under which the petitioner's salary has been re-fixed by reducing the same and recovery of the alleged excess salary paid to the petitioner has been initiated.



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2. The petitioner was appointed as a Cleaner Class-IV on compassionate ground and subsequently was promoted as Assistant Motor Mechanic Class - III in the pay scale of Rs.775-12-835-15-1030 and was promoted as Motor Mechanic on 23.11.1995 in the pay scale of Rs.950-20-1150-25-1500 and he attained Selection Grade Scale and Special Grade Scale in the year 2005 and 2015 respectively.

3. The petitioner has been served with the impugned order dated 17.02.2020, re-fixing the scale of pay from 9300-34800+4200/- to 5200-20200+2600/- and an order to recover excess salary paid, stating that the Selection Grade Pay Scale of 9300-34800+4200/- was wrongly fixed instead of 5200-20200+2600/-, to all the Motor Mechanics and also ordered to recover the excess salary paid to the Motor Mechanics including the petitioner. According to the petitioner, his salary has been erroneously re-fixed as 5200-20200+2600/- instead of 9300-34800+4200/-.

4. The petitioner has challenged the impugned order on the following grounds:

It is contrary to the guidelines issued by the Honourable Supreme



Court in the case of *State of Punjab and others Vs. Rafiq Masih (White*

Washer) case wherein it has been held that recovery made is impermissible in law in the following circumstances:

a) Recovery from employees belonging to Class-III and Class-IV service (or Group-C or Group-D service);

b) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery is issued;

c) 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;

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

5. In the aforementioned circumstances, the Honourable Supreme Court in the aforementioned decision has held that any recovery made is bad in law.



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6. The petitioner also contends that similarly placed employees, who were also Motor Mechanics, had challenged similar orders seeking for recovery and re-fixation of the scale of pay in W.P.Nos.7292, 7293, 7295, 7296, 7307, 7309, 7312, 7314, 7316, 7317, 10825 and 10277 of 2020. The said Writ Petitions came to be allowed by a learned Single Judge of this Court on 24.12.2021 and directed the respondents to refund the alleged excess payment, if any collected from the employees, and re-fix their pay scale within a period of 120 days from the date of receipt of a copy of the said order and in the same order a direction was also issued to the respondent Corporation and the Government of Tamil Nadu to issue Government Orders to conclude the issue within a period of 180 days from the date of receipt of a copy of the said order.

7. Learned counsel for the petitioner would now submit that aggrieved by the order of the learned Single Judge in the batch of Writ Petitions referred to supra, the respondents had preferred Writ Appeals in W.A.Nos.2030 to 2045 of 2022. The Division Bench of this Court by its order dated 06.09.2022 dismissed the Writ Appeals and confirmed the findings of the learned Single Judge. Therefore, according to her, the



petitioner being similarly placed as that of the petitioners in the batch of Writ Petitions referred to supra, the petitioner must also be given the similar benefit.

8. Learned Standing Counsel appearing for the respondent Corporation also agrees that the findings of the learned Single Judge has attained finality by the decision of the Division Bench of this Court dated 06.09.2022 passed in W.A.Nos.2030 to 2045 of 2022. He would also submit that pursuant to the order of the Division Bench of this Court dated 06.09.2022 passed in W.A.Nos.2030 to 2045 of 2022, the pay of the respondents / employees involved in those Writ Appeals were also re-fixed. In view of the above submissions made by the learned Standing Counsel appearing for the respondent Corporation, the petitioner's pay scale will also have to be re-fixed as prayed for in this Writ Petition and he must also be entitled to get all monetary benefits which he is entitled to and which was not granted in view of the erroneous pay fixation done by the respondents earlier. The recovery order based on the erroneous pay fixation, which is also the subject matter of challenge in this Writ Petition has also got to be quashed.



WEB COPY



W.P.No.20817 of 2020

9. For the foregoing reasons, the impugned order dated 17.02.2020 passed by the third respondent is hereby quashed and the Writ Petition is allowed by directing the second respondent to restore the Selection Grade Pay Scale of Rs.9300-34800+4200/- notionally from 01.01.2006 and monetarily from 01.08.2010, along with all consequential benefits within a period of twelve weeks from the date of receipt of a copy of this order. The arrears of salary and other arrears also shall be paid to the petitioner by the respondents within a period of twelve weeks from the date of receipt of a copy of this order. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

17.11.2022

Index : Yes/No
Speaking Order : Yes / No
ab



W.P.No.20817 of 2017

To

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Municipal Administration and Water Supply Department,
Namakkal Kavignar Maaligai,
Fort St.George, Chennai - 600 009.

2.The Commissioner,
Greater Chennai Corporation,
Ripon Building, Chennai - 600 003.

3.The Superintendent Engineer,
Greater Chennai Corporation,
Mechanical Engineering Department - North Depot,
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ABDUL QUDDHOSE. J.,

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