



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.2022 of 2020and

WMP(MD) Nos.1686, 1687 of 2020 & 3204 of 2021

WEB COPY

T.Joseph Stephen

... Petitioner

Vs.

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,
M.R.C Nagars, Raja Annamalaipuram,
Chennai - 600 028.

3.The Assistant Director of Town Panchayats,
Collectorate Buildings,
Nagercoil,
Kanyakumari District - 629 001.

4.The Executive Officer, (II Grade)
Kappiyarai Town Panchayat,
Kappiyarai,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed in Na.Ka.No.346/2019, dated 03.01.2020, by the fourth respondent and quash the same as illegal.

For Petitioner : Mr.K.P.Krishna Doss

For Respondents : Mr.Veera Kathiravan,

Additional Advocate General

Assisted by Mr.S.Shaji Bino

Special Government Pleader

O R D E R

The writ petition is filed as against the order of the fourth respondent, fixing the scale of pay of the petitioner lower than the earlier pay granted to the petitioner and against the order for recovery from the petitioner.



2. The Petitioner, who is working in the respondent Town Panchayat as Water supply attendant/water tank operator was initially paid on consolidated pay and as per G.O(MS)No.60, Rural Development and Special Grade Panchayat (பி.உள.ப) Department, dated 23.06.2006, the petitioner was brought under the time scale of pay at Rs.2550-55-2660 -60-3200. Thereafter, the petitioner's salary was again revised as per G.O.Ms.No.234 and 252 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.6,860/- 1900, with an increment of Rs.260. The Audit of the Panchayat account was held for the year 2015-16 and an objection was raised that the salary fixed for the petitioner 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 03.01.2020 revised the scale of pay and also ordered to recover the excess amount of salary, which was granted to the petitioner from 01.10.2010 onwards.

3. The learned counsel appearing for the petitioner submitted that the impugned order has been passed without issuing any notice to the petitioner and his right accrued 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 petitioner and there is no misrepresentation on the part of the petitioner 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.***

4. 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, Pump 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.

5. 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.

6. 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.

7. Accordingly, the Government revised the scales of pay of the Technical Categories (Trade Posts) in all Government/Local bodies in a uniformed manner and redesignated them. 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 vacate the posts. Further, direction was also issued to all the Government Departments/Local bodies to make appointment 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 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.



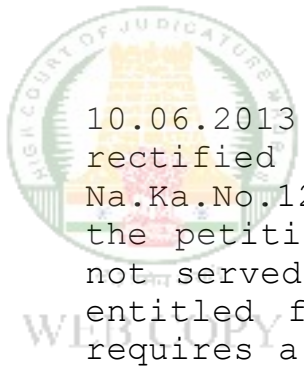
Helper (Street Light Maintenance), Helper (Water Supply), OHT Operator, Motor Operator, Watchman, Water Supply maintenance operator, Hand Pump maintenance, Pump Cleaner- Educational Qualification-8th std.,"

8. Accordingly, the petitioner, who was appointed as Water Supply Attendant/ Water Tank Operator, has also been refixed in the scale of pay and now this mistake has been detected in the Audit objection and accordingly, revised clarification has 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 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.

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

10. The petitioner, who was appointed as Water Supply Attendant/ Water Tank Operator comes under the category of 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 posts. 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 directed that the trade posts with practical experience i.e., the category of Unskilled Assistants shall become defunct as and when the existing incumbents vacate the posts.

11. 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



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, the petitioner is not having any qualification of ITI and he has not served in any Unskilled trade posts and therefore, he is not entitled for the scale of pay as fixed for trade post, which requires a qualification of ITI. The benefit which was granted to a few section of basic servants, who served on experience in the unskilled trade post, cannot be a ground to extend the same benefit to all the basic servants. The One Man Commission which extended 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 the present occupants vacate.

12. 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."



13. 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. The petitioner fall under the Group-D and the benefits have been extended to the petitioner for more than 5 years and therefore, recovery cannot be made as against the petitioner 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.

14. Accordingly, the writ petition is disposed of and there shall not be any recovery of the amount, which has been granted to the petitioner. However, the petitioner is 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)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vrn

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 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,
M.R.C Nagars, Raja Annamalaipuram,
Chennai - 600 028.



3.The Assistant Director of Town Panchayats,
Collectorate Buildings,
Nagercoil,
Kanyakumari District - 629 001.

4.The Executive Officer, (II Grade)
Kappiyarai Town Panchayat,
Kappiyarai,
Kanyakumari District.

**W.P(MD)No.2022 of 2020 and
WMP (MD) Nos.1686, 1687 of 2020 & 3204 of 2021
05.01.2022**

KK(CO)
SB(25.01.2022) 7P 5C