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W.P.(MD)No.6968 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.6968 of 2016

and

W.M.P.(MD)Nos.5960 and 5961 of 2016

- 1.Susila Mary
- 2.K.Tamilvani
- 3.G.Manjula
- 4.K.Panchavarnam
- 5.P.Banumathi
- 6.P.Vijayalakshmi
- 7.K.Vijayalakshmi
- 8.M.Selvi
- 9.S.Rajeshwari
- 10.J.Kanagalakshmi
- 11.A.Nageshwari
- 12.C.T.Meenakshi
- 13.S.Rajathi
- 14.K.Vasuki
- 15.R.Jeyalakshmi
- 16.C.Pappathy
- 17.P.Senthamail Selvi

... Petitioners

vs.



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- 1.The State of Tamil Nadu,
represented by its Secretary,
Public Health and Family Welfare Department,
Fort St. George, Chennai-09.
- 2.The Commissioner of Municipal Administration,
No.259, Anna Salai, Thenampetti,
Chennai-05.
- 3.The Commissioner,
Dindigul Corporation,
Municipal Office,
K.N.H Road, Dindigul,
Dindigul District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order in G.O.Ms.No.297, Finance (Pay Cell) Department, dated 22.07.2013, on the file of the respondent No.1 and to quash the same as illegal to the extent of ordering the revision of scale of pay to give the monetary benefit from 01.04.2013.

For Petitioners : Mr.T.Lajapathi Roy
For R1 and R2 : M/s.D.Farjana Ghoushia
Special Government Pleader
For R3 : Mr.J.Lawrence



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ORDER

This writ petition is filed for issuance of a writ of Certiorari, to quash that portion of the impugned G.O.Ms.No.297, Finance (Pay Cell) Department, dated 22.07.2013, on the file of the respondent No.1 to the extent of ordering the revision of scale of pay to give the monetary benefit from 01.04.2013.

2. When the writ petition was taken up for hearing, the learned Counsel appearing for the petitioners submitted that writ petitioners 4 and 5 have already retired from service and they have remitted the alleged excess amount that was credited in their accounts. As far as other writ petitioners are concerned, they are still in service.

3. Here is a case where two Government Orders are passed and the G.O.s number is one the same but on various dates, i.e. G.O.Ms.No.297, Finance (Pay Cell Department) dated 26.08.2010 and G.O.Ms.No.297, Finance (Pay Cell) Department, dated 22.07.2013. Hence the G.O.s ought to be read along with the



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dates of the G.O.

4. The brief facts as stated in the affidavit are that the 1st petitioner was appointed on 01.11.1988 as Multi-Purpose Health Worker (Female) and subsequently from 03.03.2009 the post was re-designated as Urban Health Nurse and is working as Urban Health Nurse till date. Likewise, all the petitioners were appointed on various dates and are working till date except 4th and 5th petitioners. The Government appointed “One Man Commission” as per G.O.Ms.No.444, Finance (PC) Department, dated 09.06.2009, to examine the recommendations for revision of scales of pay in pursuance to the re-designation of certain categories in Public Health and Preventive Medicine Department. Based on the report of the “One Man Commission”, the pay scale was revised correcting the anomalies in the scale of pay and the G.O.Ms.No.297, Finance (Pay Cell Department) dated 26.08.2010, was issued in which it is stated that the revision of scales of pay was ordered as per para-1 above should take notional effect from 01.01.2006 for the purpose of fixation of pay in the revised scales of pay with monetary benefit from



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01.08.2010. The pay scale for the re-designated post of Urban Health Nurse was Rs.4,000-1800+(GP)2000/- and the same was revised as Rs.5,200- 20,200+(GP) 2400/- with notional effect from 01.01.2006 and with monetary benefit from 01.08.2010. The said revised pay was paid along with arrears to all the persons and the petitioners were paid in the year 2012 only.

5. One Murugeswari, a similarly placed person who was working as the Maternity Assistant retired from service on 31.01.2016. When the pension proposals were prepared for her, it was noted that the monetary effect of the revised scale was wrongly given with effect from 01.08.2010 and as such certain amount was directed to be recovered from her. It was reported that there were audit objections in terms of the subsequent G.O.Ms.No.297, Finance (Pay Cell) Department, dated 22.07.2013. The issue of recovery in the case of Murugeswari was taken up in the meeting between the Authorities and the Association leaders. It was categorically stated that for all those whose revised pay scale was given effect from 01.04.2013, would be revised as per G.O.Ms.No.297, Finance (Pay



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Cell) Department, dated 22.07.2013. Since the petitioners were not aware of the said G.O., they demanded the said G.O and thereafter, challenged the same in the present writ petition, after a lapse of 3 years.

6. The main contention of the petitioners are that the nomenclature for the petitioners' post of Multi-Purpose Health Worker (Female) (re-designated as Urban Health Nurse) serving in Urban Primary Health Center comes under Municipal service, and the post Multiple Purpose Health Worker (Female) (re-designated as Village Health Nurse) that is serving under the Department of Public Health and Preventive Medicine Department are one and the same. Hence, they are entitled to the benefits of G.O.Ms.No.297 dated 26.08.2010.

7. The contention of the respondent is that the G.O.Ms.No.297, Finance (Pay Cell) Department, dated **26.08.2010**, was passed covering the employees working for Public Health and Preventive Medicine Department granting benefits by fixing it notionally from 01.01.2006 and actual monetary benefits from



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01.08.2010. The said G.O. is applicable only for the Public Health Department. Since the petitioners are working in the Municipal Department, they are not entitled to the benefits of G.O.Ms.No.297, Finance (Pay Cell) Department, dated **26.08.2010**.

8. When the petitioners and the similarly placed persons demanded the same benefits as per G.O.Ms.No.297 dated **26.08.2010** the respondents declined to grant the same, stating that the same is not applicable to persons serving under Municipality. The petitioners are aggrieved, since for the same category of post working in two different Departments, the Government is fixing the monetary benefits for one set of persons working in Public Health Department from **26.08.2010**, but the for the same category of post working in Municipality the benefit was granted from **01.04.2013** is discriminatory.

9. The Learned Counsel appearing for the respondents further submitted that in the counter affidavit it is has been specifically stated stating that earlier



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G.O.Ms.No.297 dated **26.08.2010** was passed for Preventive Medicine Department alone. The redesignated order passed in G.O.Ms.No.34 Municipal Administration and Water Supply Department dated 03.03.2009 is also relevant. The relevant portion of the government orders is extracted hereunder:

Under Redesignation G.O.Ms.No.34

Public Health Department

S. No.	Old designation	New Designation
1	Auxiliary Nurse Midwife/Multipurpose Health Worker (Female)	Village Health Nurse
2	Lady Health Visitor (Multipurpose Health Supervisor (Female))	Sector Health Nurse

Municipality

S. No.	Old designation	New Designation
1	Multipurpose Health Worker (Female), Maternity Assistant	Urban Health Nurse
2	Health Visitor	Sector Health Nurse



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Persons covered under G.O.Ms.No.297 dated 26.08.2010

S. No.	Name of the post	Existing Scale of pay + Grade pay	Revised Scale of pay + Grade pay
1	Village Health Nurse (Erstwhile Auxiliary Nurse Midwife/Multipurpose Health Worker (Female))	9300-34800-4200	No change in pay scale except redesignation
2	Sector Health Nurse (Erstwhile Lady Health Visitor (Multipurpose Health Supervisor(Female))	5200-20200+2000	5200-20200+2400

Persons covered under G.O.Ms.No.297 dated 22.07.2013

S. No.	Name of the post	Existing Scale of pay + Grade pay	Revised Scale of pay + Grade pay
1	Urban Health Nurse (Multipurpose Health Supervisor (Female))	5200-20200+2000	5200-20200+2400



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There are 3 categories of Health Workers, working in three departments, namely,

1. Director of Medical and Rural Health Service
2. Director of Public Health and Preventive Medicine and
3. Director of Medical Education.

The Urban Primary Health Centers will come under the Municipal Services i.e. under third respondent and they are considered as Municipal employees. The earlier G.O. in G.O.Ms.No.297 dated **26.08.2010** was passed for Public Health and Preventive Medicine Department and since the petitioners are not coming under the said Department, hence the benefits of the said G.O. cannot be claimed.

10. When the petitioners raised a similar plea, the Government considered and granted benefits under G.O.Ms.No.297 Finance (Pay Cell) Department dated **22.07.2013**. It is pertinent to mention herein that the both the government order are having same number i.e. 297, but only the date varies one is **26.08.2010** and the other one is **22.07.2013**. However, the benefits were calculated from



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01.01.2006 notionally but the actual monetary benefits different cutoff dates were prescribed. The monetary benefits were disbursed only from 01.04.2013 for the petitioner's Municipal Department. However, it was disbursed for the Public Health and Preventive Medicine Department from 01.08.2010 onwards. The respondent government has taken a conscious decision the applicability of the benefits by taking the financial viability of the government. Since both are different department, the government has every power to fix the benefits for different class of persons. Hence this Court is of the considered opinion that the claim of the petitioners cannot be entertained.

11. The petitioners relied on the judgment rendered in the State of Punjab and others Vs. Rafiq Mashhi (White Washer) and other reported in (2015) 4 SCC 334, wherein it is held that the excess amount cannot be recovered, if the claim falls under clause five clauses. The petitioners claim that they fall under the clause (iii) and hence, based on the said judgment, the petitioners prayed to forebear the respondent to recovery. The relevant portion of the judgment is



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extracted hereunder:

“12. 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:

(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.”

12. The petitioners also relied on another judgment rendered by this Court in W.P.(MD)No.16260 of 2015, dated 19.06.2019, wherein this Court has directed the respondents not to recover and however, the petitioners are not entitled to the



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said benefits and hence, this Court directed the respondents to refix the correct salary to the petitioners.

13. Therefore, following the aforesaid judgments, this Court is directing the respondents to refix the salary. However, the respondents shall not recover the said amount.

14. Having said so, the Government cannot be at loss. Therefore, the respondents are directed to initiate proceedings against the erring officials for wrongly fixing and recover the said amount from the erring officials.

15. The petitioners prayed to refix atleast from 2012 onwards and not from 2013. The petitioners are at liberty to submit representations to the Government and the Government shall consider the claim of the petitioners.



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16. With the above said observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes

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To

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