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W.P.No.1828 of 2020 & batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. Nos.1828, 16212, 1413, 2393, 2396, 2400, 8939, 10018, 15326, 16064, 17938, 17341, 17510, 17935, 17940, 17944, 17945, 18708, 18812, 18815 of 2020 & 3615 of 2021
and W.M.P.Nos.2127, 20244, 1671, 8689, 8693, 8695, 10873, 19167, 20016, 21489, 21695, 22230, 22238, 22244, 22249, 22252, 23231, 23393 & 23389 of 2020 and 2827, 15441, 839, 27524, 17249, 6257, 6256, 6258, 6259, 6238 & 4150 of 2021

W.P.No.1828 of 2020
and W.M.P.No.2127 of 2020

Sahaya Selvan

...

Petitioner

/vs/

1. The Director of Town Panchayat,
Kuralagam Buildings,
Chennai – 108.
2. The Assistant Director of Town Panchayat,
Nagercoil Range, Nagercoil,
Kanyakumari District.
3. The Executive Officer,
Keelkulam 2nd Grade Town Panchayat,
Kanyakumari District.

... Respondents



W.P.No.1828 of 2020 & batch

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the first respondent dated 27.03.2019 issued in Na.Ka.No.14759/2012/A10, 2nd respondent dated 18.12.2019 issued in Na.Ka.No.5503/2018/Pa4 and the third respondent dated 31.12.2019 issued in Na.Ka.No.300/2019/A1 and quash the same in so far as the petitioner alone and consequently to direct the respondents 1 to 3 to restore the original pay fixation of Rs.4000-20200+1900 to the petitioner in terms of G.O.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010 from the date of his eligibility.

For Petitioner ... Mr.P.L.Thirumoorthy

For Respondents ... Mr.R.Neelakandan
Additional Advocate General
for Mr.G.Nanmaran
Special Government Pleader

COMMON ORDER

These Writ Petitions have been filed challenging the reversion of pay band and recovery orders passed by the respective Town Panchayat and challenging the proceedings of Director of Town Panchayat in withdrawing the previous clarification which permitted the additional pay hike by applying G.O.Ms.No.338, Finance (PC) Department dated 26.08.2010.



W.P.No.1828 of 2020 & batch

WEB COPY

2. Mr.D.Prabu Mukunth Arunkumar, learned counsel for the petitioner in W.P.No.1413/2020 submitted that on an audit objection raised pursuant to the implementation of G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010 as regards the extension of benefit of re-fixation of pay to the unskilled posts, a circular has been issued by stating that the fixation of pay in respect of the unskilled posts are erroneous and proceedings have also been issued for recovery of pay to the petitioners as per the new pay fixation; several Writ Petitions came to be filed by the individuals subsequent to that withdrawal. In one such Writ Petition in W.P.No.669 of 2018, the learned single Judge has done an exhaustive exercise and observed that no mechanical orders should have been issued pursuant to the audit objection without making a basic differentiation between two categories and it is arbitrary; by setting aside the impugned order, the Court had also directed the respondents to redo the exercise and find out the rationale for the difference between the skilled and unskilled posts in order to exclude one category from getting the benefit arose out of G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010; until now no such exercise has been done but the impugned proceedings continues



W.P.No.1828 of 2020 & batch

to be held against the so called unskilled employees.

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3. On perusal of G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010, the following categories have been mentioned against whom the revised scale of pay is allowed to be fixed:

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



4. Mr.K.Raja, learned counsel for the petitioner in W.P.No.8939/2020

attracted the attention of Court to Paragraph No.4 of the said Government Order and submitted that the Government has consciously stated that the unskilled Assistants post would become defunct as and when future vacancy arises and thereafter the vacancies will be filled only by those persons who are holding I.T.I. Certificate; the Government had consciously taken a decision to extend the revised scale benefit to both the skilled and unskilled post.

5. For the sake of clarity, paragraph No.4 of G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010 is extracted hereunder:

“ 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 bodies shall be made to the post of Skilled Assistant Grade – II (entry level posts) from among the I.T.I. Certificate holders only by giving due protection to the existing incumbents. Accordingly, all Heads of Departments and Local bodies are directed to adhere to these orders scrupulously and send necessary proposals immediately to Government (concerned administrative department in Secretariat) for amending the relevant Service Rules as directed in these orders wherever necessary. Based on the above orders all the administrative departments of Secretariat are requested to take necessary follow-up action and obtain necessary proposals from the Heads of Departments under their administrative control and expedite action to issue necessary amendment to the relevant service rules governing the Technical categories (Trade posts) immediately.”



6. Mr.R.Neelakandan, learned Additional Advocate General submitted that the benefits of G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010 is applicable only for a trade post and not the post held by the petitioners who are helpers in street light maintenance, water supply maintenance and function as Over Head Tank Operators and Watchmen in Town Panchayat and these categories fall under non-trade post. He further submitted that the Director of Town Panchayat has mistakenly included those persons who were holding non-trade posts and after it was found out during an audit objection, a revised circular was issued to all the Town Panchayat Executive Officers not to fix the scale of pay for non-trade posts as per G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010.

7. The learned Additional Advocate General further submitted that the petitioners do not hold technical posts and for the post held by the petitioners, they need not submit a certificate issued by I.T.I; as the posts held by the petitioners are *prima facie* non-technical, they cannot seek the benefits under G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010.



8. All that which caused to issue revised circular to withdraw or stop the earlier benefit conferred on a category of the employees like the petitioner, is an audit objection raised by an audit team. When a policy decision of the Government is objected by an audit team, the Government could have elaborated the basic reasons for taking a policy and offered clarification to the Audit team that could have convinced the audit about the resemblances of the Government choosing to include the non-technical persons also under the ambit of the G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010.

9. It is apparent from G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010 that the re-fixation in respect of unskilled category is an one time measure and it is not to be extended to future appointments. The basis for issuing G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010 has been vividly presented in Paragraph No.2 of the said Government Order. And it is brought down as under:

“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 I.T.I.



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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:--

- i) To merge the Unskilled and Semi-skilled employees now existing in trade posts in the scales of pay from Rs.2550-3200 to Rs.2750-4400 (pre- revised) and to place such posts on a higher scale of pay of Rs.3050- 4590 (pre-revised) with corresponding revised scale of pay duly re-designating these posts as Unskilled.*
- ii) Consequent on the above upgradestined and of Rs.3050-4590 (pre-revised) recommended to Unskilled and Semi-skilled employee (pre entry level Grade-II trade posts may be placed one level above the existing scale of pay from Rs. 3050-4590 to Rs. 3200-4900 (pre-revised) with corresponding revised scale of pay duly re-designating the Grade trade posts as Skilled Assistant Grade--II.*
- iii) Considering one level jump recommended to Grade-II trade posts and also taking into account the "plus two" qualification prescribed for certain trade courses, the Grade I trade posts may be placed one level above the existing scale of pay from Rs.4000-6000 to Rs.4300-6000 (pre- revised) with corresponding revised scale of pay duly re-designating the Grade I trade posts as Skilled Assistant Grade--I.*
- iv) Consequent on the upgraded scale of pay recommended to Grade-I trade posts, the promotion posts to Grade-I trade posts may be placed one level higher than the existing scale of pay. Accordingly, the scale of pay of the promotion posts to Grade- trade posts viz. Artisan Special/ Assistant Foreman etc. may be revised from Rs.4300-6000 to Rs.4500-7000 with corresponding revised scale of pay duly recommending to re-designate these posts as Special Artisan.*



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v) *The Supervisory technical posts presently in the scale of pay of Rs.4500-7000 (pre-revised) such as Foreman (Mechanical), Maistry, Chargeman (Mechanical / Electrical), Assistant Store Keeper, Tailoring/ Weaving Instructor, Boot Maistry, Soap Chemist, Phenyle Assistant and certain posts in Stationery & Printing Department, the requisite qualification for direct recruits is "Diploma". As all para-medical posts with diploma qualification in the scale of pay of Rs. 4500-7000 have been upgraded at Rs.5000-8000 (pre-revised), the Supervisory Technical posts may also be revised from Rs.4500-7000 to Rs.5000-8000 (pre- revised) with corresponding revised scale of pay duly re-designating these supervisory posts as Supervisor."*

10. The One Man Commission which set up to study pay anomaly consequent to a pay commission implementation had come out with a report and recommendations. The One Man Commission had to consider the requests made from various associations in respect of the decision of the Government to merge the '*Unskilled*' and '*Semi-Skilled Workers*'. The One Man Commission has also considered the request of technical employees who have been appointed with I.T.I. Certificates / practical experience in the respective trades and recommended to rationalize the trade post to the revision in their scale of pay and to change of nomenclature of the posts as extracted '*supra*'.



11. Those persons who have only practical experience in operating trade functions were categorized under unskilled workers as per the above Government Order. Though the above persons did not have any academic certificates to do technical functions, their services were utilized in view of their practical experience. Those person who were doing trade functions in view of their practical experience cannot be termed as '*Skilled Assistants*'. The Government has taken into consideration of various other aspects and has chosen to reclassify the '*non-trade*' and '*trade*' posts as '*Skilled Assistants Grade I and Grade II*' and '*Unskilled Assistants*'.

12. As the Government has utilized the services of the '*Unskilled Workers*' in the trade area in view of their practical experience, the Government though it fit to extend the benefit of refixation of their pay under G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010. However, it is an one time measure and hence the Government has taken a conscious decision of filling up the future vacancies only from those persons who have I.T.I. certificates. This new measure taken by the Government would show that the persons who have technical skill are required more in



W.P.No.1828 of 2020 & batch

number for executing the essential functions of local bodies. Till then, the demand was taken care of by those workers who have practical experience.

13. When an audit team objected the above decision, the persons at the helm of the affairs ought to have explained the rationale and necessity of extending the monetary benefit for '*unskilled*' category as an one time measure and got the objection expunged. Instead, various circulars/orders for withdrawal/stoppage or recovery were issued in total contradiction to the spirit of the G.O.Ms.No.338, Finance (Pay Cell) Department, dated 26.08.2010. Those orders appear to be only knee-jerk reactions given to the audit objection. If the audit objection is allowed to be the reason for withdrawal of any benefits, many of the Government's scheme or projects would become redundant.

14. Once a policy decision has been taken and it has been approved by way of issuing a Government Order, the same cannot be withdrawn by an administrative circular or proceedings especially to recover any monetary benefit which was granted already. The monetary benefit already granted is like '*consumed bread*'. So it is always better to think twice before giving the



W.P.No.1828 of 2020 & batch

bread for consumption than to ask for vomiting it afterwards. Even for any extraneous reasons, if the Government thinks fit to withdraw any benefit that can be done only by issuing a fresh Government Order and not by way of issuing any administrative orders or circulars.

15. In view of the above stated reasons, these Writ Petitions are allowed and the proceedings dated 27.03.2019 issued vide Na.Ka.No.14759/2012/A10, dated 18.12.2019 issued vide Na.Ka.No.5503/2018/Pa4 and dated 31.12.2019 issued vide Na.Ka.No.300/2019/A1 by the respondents 1 to 3 respectively are quashed and consequently the respondents 1 to 3 are directed to restore the original pay scale as fixed vide G.O.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010 from the date of their respective eligibility. No costs. Connected miscellaneous petitions are closed.

22.11.2023

Index: Yes / No

Speaking order / Non-speaking order

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W.P.No.1828 of 2020 & batch

To:

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W.P.No.1828 of 2020 & batch

R.N.MANJULA ,J.

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W.P. Nos.1828 of 2020 & batch

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