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Writ Petition No.6452 to 6454 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

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THE HONOURABLE DR.JUSTICE D.NAGARJUN

WP Nos.6452 to 6454 of 2015

WP. No.6452 of 2015

A.Tamil Selvi

..Petitioner

vs.

1.The Government of Tamilnadu,
rep. by its Secretary to Government,
Finance (pay-cell) Department,
Fort St. George, Chennai-600 009

2.The Government of Tamilnadu,
rep. by its Secretary to Government,
Health Department, Secretariat,
Fort St. George, Chennai-600 009

3.The Director of Medical Education,
Kilpauk,Chennai- 600 010

4.The Dean,
Rajiv Gandhi Government Hospital,
Chennai-600 003

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of a Mandamus, to direct the respondents especially the 2nd & 3rd respondents to re-fix the petitioner's pay scale eligible to the post, "Operation Theatre Assistant" otherwise called as



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"Operation Theatre Technician" considering the various grievances of the "Operation Theatre Assistants" applying the pay scale to feeder category posts such as female Nursing Assistant/Male Nursing Assistant/Hospital Assistant(Nursing Assistant Grade-I) to the tune of Rs.5200-20200 +2400/- towards Grade Pay and also in the light of the revision of selection grade pay fixed in the category of "Nursing Assistant Grade-I/Operation Theatre Assistant" otherwise called as "Operation Theatre Technician" at Rs.9300+4200 towards grade pay and also in view of attaining selection grade by the petitioner in the said category of post making him eligible to draw the pay scale of Rs.9300+4200 towards grade pay making the petitioner eligible to draw not only the difference in monetary benefits, but stepping up of his pay scale duly considering the petitioner's last representation made through the Tamilnadu Government Theatre Assistants & Technicians cum Anesthesia Technician Welfare Association dated 03.05.2012.

For Petitioner : Mr.A.Amalraj

For Respondents : Mr.P.Sathish, AGP

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P.Raman

..Petitioner

vs.

1.The Government of Tamilnadu,
rep. by its Secretary to Government,
Finance (pay-cell) Department,
Fort St. George, Chennai-600 009



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2.The Government of Tamilnadu,
rep. by its Secretary to Government,
Health Department, Secretariat,
Fort St. George, Chennai-600 009

3.The Director of Medical Education,
Kilpauk,Chennai- 600 010

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents especially the 2nd & 3rd respondents to re-fix the petitioner's pay scale eligible to the post, "Anesthesia Technician" considering the various grievances of the "Operation Theatre Assistants", "Technicians" & "Anesthesia Technicians" claiming equivalent pay scales on par with Heart Lung Hypothermia Machine Technician/Operator ECG/EEG Technicians and pay scale to "Anesthesia Technicians" on par with "Laboratory Technician" to the tune of Rs.9300-34800 in the light of concomitant promotions made to the post, "Craftsman" with higher pay scale apart from framing Adhoc Rules in G.O.Ms.No.51, Health & Family Welfare Department, dated 07.02.2011 making the petitioner eligible to draw not only the difference in monetary benefit, but stepping up of his last drawn scale for the actual drawal of pensional benefits duly considering the petitioner's last representation made through the Tamilnadu Government Theatre Assistants & Technicians cum Anesthesia Technician Welfare Association dated 03.05.2012.

For Petitioner : Mr.A.Amalraj

For Respondents : Mr.P.Sathish, AGP



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WP. No.6454 of 2015

S.Muthumuniyandi

..Petitioner

vs.

1.The Government of Tamilnadu,
rep. by its Secretary to Government,
Finance (pay-cell) Department,
Fort St. George, Chennai-600 009

2.The Government of Tamilnadu,
rep. by its Secretary to Government,
Health Department, Secretariat,
Fort St. George, Chennai-600 009

3.The Director of Medical Education,
Kilpauk, Chennai- 600 010

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents especially the 2nd & 3rd respondents to re-fix the petitioner's pay scale eligible to the post, "Operation Theatre Assistant" considering his various grievances applying the pay scale to feeder category posts such as female Nursing Assistant/Male Nursing Assistant/Hospital Assistant(Nursing Assistant Grade-I) to the tune of Rs.5200-20200 +2400/- towards Grade Pay from the pre-existing pay scale of Rs.5200-20200+2000/- towards grade pay and also in the light of the revision of selection grade pay fixed in the category of "Nursing Assistant Grade-I/Operation Theatre Assistant" at Rs.9300+4200 towards grade pay and also in view of attaining selection grade by the petitioner in the said category of post making him eligible to



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draw the pay scale of Rs.9300+4200 towards grade pay with the difference in monetary benefits, and also stepping up of his last drawn scale of pay for the actual drawal of pensionary benefits duly considering the petitioner's last representation made through the Tamilnadu Government Medical Operation Theatre, Assistant Technician, Anesthesia Technician Welfare Association dated 03.05.2012.

For Petitioner : Mr.A.Amalraj

For Respondents : Mr.P.Sathish, AGP

COMMON ORDER

Since the issue involved in these Writ Petitions is common and that all of them are interconnected, these Writ Petitions are taken up together and being disposed of by this common order.

2. The petitioners were initially appointed as Theatre Assistant, Nursing Assistant and Stretcher Bearer respectively and later, they were appointed as Male/Female Nursing Assistants and despite they rendered number of years of service and possessing requisite qualifications, they were denied equal pay scale on par with the similar category of employees.

3. The petitioners were not granted equal pay scale, on account of



non-framing of Adhoc Rules, by adopting the guidelines as provided under G.O.Ms.No.511, Finance (Pay-Cell) Department, dated 01.08.1992. The respondents have failed to implement the recommendations of Official Committee on revision of pay scales with effect from 01.01.2006 in pursuance of G.O. Ms.No. 234 Finance (Pay Cell) Department dated 01.06.2009 and also the recommendations of One Man Commission which was constituted to examine pay anomalies consequent to the implementation of the recommendations of Official Committee in pursuance of G.O.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010.

4.The G.O.Ms.No.216, dated 26.08.2010 was issued revising of pay of certain categories of posts in Rural Development and Panchayat Raj Department, implementing the recommendations of One Man Commission, which has recommended for revision of scale of pay in respect of Female/Male Nursing Assistant/Hospital Assistant and also certain categories in Rural Development & Panchayat Raj Department, at Rs.5200-20200+Rs.2400 Grade Pay from the existing pay scale of Rs. Rs.5200-20200+Rs.2000 Grade Pay. According to the petitioners, they were allowed only much lesser pay scale than the actual pay allowed in feeder



category posts, which resulted in pay anomaly.

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5. The petitioners therefore, have sought for re-fixing of petitioners' scales of pay on par with similarly placed category of employees. The petitioners have made a representation dated 03.05.2012 through their Association and another representation in the month of August 2013, however, no orders have been passed, therefore, the petitioners sought for suitable directions.

6. The respondents 1 to 3 have filed counter affidavits. The sum and substance of the counter affidavits, is stated as under:

One Man Commission was constituted in G.O (Ms) No.444, Finance (Pay Cell) Department dated: 09.09.2009, to examine the anomalies, if any arising out of the recommendations of the official Committee 2009. Based on the recommendations made by the One Man Commission in the G.O (Ms) No.316, Finance (Pay Cell) Department dated: 26.08.2010, Government has revised the pay of certain categories in Rural Development and Panchayat Raj Department only in the above Government order. Among others, the pay of Nursing Assistant has been revised from Rs.5200-20200



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Grade Pay Rs 2000 to Rs 5200- 20200 Grade Pay Rs 2400 and not revised Pay Scale for the posts for Lascar, Stretcher Bearer categories unified under Hospital workers further in respect of Female / Male Nursing Assistant in Rural Development and Panchayat Raj Department is concerned.

7.The One Man Commission observed that this post is placed on par with Maternity Assistant in Medical Department, for which the commission recommended upward pay revision at Rs5200-20200 Grade Pay Rs 2400, and recommended that the upward revision of scale of pay recommended for the post under Medical Department may be made applicable to this post.

8.Accordingly orders were issued in G.O (Ms) No. 316, Finance (Pay Cell) Department dated: 26.08.2010, revising the scale of pay for the post of Female / Male Nursing Assistant in Rural Development Department. It is pointed out that the Female / Male Nursing Assistant in Medical Department were placed on par with the basic service personnel at Rs. 4800-10000+ Grade Pay Rs. 1300 and they cannot claim higher pay scale on par with the similar posts in the Rural Development Department The method of recruitments or appointment and qualification for appointment to



one post to another post or department is distinct. Hence the petitioner cannot compare the pay with other category/ service in other departments.

9. It is further stated that there is no violation of rules in rejecting the request of the petitioners, since the orders issued in GO.Ms.No.316, Finance (PC) Department, dated 26.08.2010 are applicable only to the Rural Development and Panchayat Raj Department. Moreover, the revision of pay and Grade Pay involves Policy decision of Government. Further, the Government after careful consideration of its resources and revenue, besides the allocation made to the welfare schemes for the people of the State, revised the scale of pay of all its employees. It is submitted that fixation of pay is an executive function of the Government and the Government is bound to maintain an equilibrium among the various categories of employees for the smooth functioning of the Government. With these averments, the respondents sought for dismissal of the Writ Petitions.

10. Heard both sides and perused the records.

11. During the course of submissions, the learned Additional



Government Pleader has submitted that though the petitioners claimed the benefits under G.O.Ms.No.316 dated 26.08.2010, subsequently, pursuant to the order dated 05.01.2022 passed by the Madurai Bench of this Court WP.(MD) No.23538 of 2015, the respondents had issued G.O.No.299 dated 29.09.2022, thereby, the petitioners are not entitled for the benefits under earlier G.O. Ms.316 dated 26.08.2010. The relevant paragraphs 8 and 9 contained in the order dated 05.01.2022 passed by the Madurai Bench of this Court in W.P.(MD) No.23538 of 2015 are extracted hereunder:

“8. On perusing the affidavit and the counter affidavit, this Court is of the considered opinion that the claim of the petitioner will come under the purview of policy decision of the Government. The judicial interference in policy decision is very limited. However, as rightly pointed out by the petitioner, the Nursing Assistants are recruited by a common notification and they are trained in the same manner. Thereafter, they are allotted to various Rural Health Centers, Urban Dispensaries and Taluk Hospitals. The candidates, who are appointed will not have any say or rather choose the department. When the recruitment for all these Nursing Assistants are carried out in a common way, the salary also ought to be paid uniformly to all the persons. The Government cannot state that they have been allotted under



different departments and different Service Rules will be applicable and hence, different salary will be applicable to the said candidates. The Government ought to have categorized all these candidates in a common Service Rule and ought to have paid the salary uniformly to all the persons. Therefore, the grievance of the petitioner has to be addressed in a proper perspective.

“9. The impugned order states that the Nursing Assistants have been placed on par with the Maternity Assistant in the Medical Department and hence upward pay revision is suggested. This Court is of the considered opinion that the “One Man Commission” is wrong in stating so, the commission has not taken into account that the Nursing Assistants are recruited on the same notification and trained on the same way and suddenly keep the Nursing Assistants in RD&PR on par with Maternity Assistant is absolutely wrong. The Government should fix the pay during revision by taking all factors into consideration. Otherwise there will be huge loss to the government exchequer and the same would be mishandling of public money. Therefore, this Court set aside the impugned order dated 04.09.2015 and the first respondent shall resolve this pay anomaly to the Male / Female Nursing Assistants coming under Rural Department and Panchayat Raj, Director of Medical and Rural Health Services and Director of Medical Education Department. The said exercise



shall be carried out within a period of 12 weeks from the date of receipt of the copy of the order.”

12. It is also relevant to extract paragraphs 4, 5, 6 and 7 contained in G.O.Ms.No.299 Finance (Pay Cell-2) Department, which read as under:

“4 Already all the Male and Female Nursing Assistant working in Rural Development and Panchayat Raj Department were absorbed under Medical department consequent on the conversion of Panchayat Union Medical shops into Primary Health Centres in a phased manner.

“5. In this circumstances, in order to implement the orders of Hon'ble Madurai Bench of Madras High Court, by following natural justice, views of individual Male and Female Nursing Assistant concerned whose pay have been fixed on par with Male and Female Nursing Assistant working in Medical department as per the reference 1st cited were obtained through the Head of Departments concerned in the reference 4th cited.

“6. In conformity to the orders of Hon'ble High Court in the reference 3rd cited, representation of individual obtained through 4th letter cited and pay sanctioned in Government order 1st cited for Male and Female Nursing Assistant working



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in Rural Development and Panchayat Raj department were thoroughly examined and hereby revised in super session of the orders issued in Government order 1^{11} cited as detailed below:

<i>Name of the Posts</i>	<i>Revised pay w.e.f. 01.01.2006</i>	<i>Revised pay w.e.f. 01.01.2006</i>
Nursing Assistant (Grade-II) (Male and Female Nursing Assistants)	Rs.4800-10000 +1300	Level -1 (15700-58100)
Nursing Assistant (Grade-I) (Male and Female Nursing Assistants)	Rs.4800-10000 +1400	Level -1 (15900-58500)

Government further directs that the above pay revision shall take notional effect from 01.01.2006 and refixation with effect from 01.10.2022. In this regard, the excess payment made as on 30.09.2022 shall not be recovered.

“7 Pay/Pension for Male/Female Nursing Assistants retired between 01.01.2006 and 30.09.2022 has to be refixed as revised in paragraph 6 above. Hence, as per this order, the Head of Departments concerned, Treasury Officers, Assistant Treasury Officers, Pension Pay Officer are advised to revise Pension/Family Pension immediately for pensioners retired



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from the posts for which Pay/Pension have been revised and not to recover excess Pension/Family Pension as on 30.09.2022.”

13. In view of the above, it is clear that the G.O.Ms.No.316, dated 26.8.2010 is no more in force and its place, G.O.Ms.No.299, dated 21.9.2022 has come into force, therefore, the petitioner cannot claim the benefits under the G.O.Ms.No.316, dated 26.8.2010, therefore, the relief sought for in the present Writ Petition cannot be granted.

14. Accordingly, the Writ Petitions are disposed of. No costs.

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Index : Yes/No
Speaking order: Yes/No
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Finance (pay-cell) Department,
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Dr.D. NAGARJUN, J

dn

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