



W.P.(MD).No.21967 of 2015

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 08.02.2023**

**CORAM**

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.P.(MD).No.21967 of 2015**

**and**

**M.P.(MD).No.2 of 2015,**

**W.M.P.(MD).Nos.13557 of 2016 and 5828 of 2017**

1. N.Saroja (Died)

2.J.Paneerselvan

3.Shanthi Ponrani

4.Jeson Jebaraj

... Petitioners

*(P-2 to P-4 are impleaded vide Court Order dated 09.12.2021 in W.M.P.(MD).No. 1134 of 2021 in W.P.(MD).No.21967 of 2015).*

**Vs**

1.The Managing Director,  
Tamil Nadu Housing Board,  
493, Anna Salai,  
Nandanam,  
Chennai – 600 035.

2.The Executive Engineer and  
Administrative Officer,  
Tirunelveli Housing Unit,  
E.B.Colony,  
Tirunelveli – 627 011.

... Respondents



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**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the Executive Engineer and Administrative Officer, Tirunelveli Housing Unit, Tirunelveli, the second respondent herein made in his letter No.E1/18/2014 dated 15.10.2015 in confirming his earlier Memo.No.E1/018/2014 dated 16.06.2014 quash the same and direct the respondents herein to continue to pay her salary and other service benefits based on the pay already fixed in the post of Typist Grade I in the scale of pay of Rs.9300-34800+4200 Grade Pay with all other consequential service and monetary benefits and disburse all the arrears within a short date that may be fixed by this Court.

For Petitioner : Mr.K.Rajkumar

For Respondents : Mr.S.Sumesh,  
Standing Counsel for Housing Board.

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### **ORDER**

This Writ Petition is filed to quash the order dated 15.10.2015 which confirmed his earlier memo dated 16.06.2014 and direct the respondents herein to continue to pay her salary and other service benefits based on the pay already fixed in the post of Typist Grade I in the scale of pay of Rs.9300-34800+4200 Grade Pay with all other consequential service and monetary benefits and disburse all the arrears.



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2. The contention of the petitioner is that because of the belated illegal refixation has resulting in loss of salary to the tune of Rs.6000/- per month which she was enjoying since 2006. The petitioner was appointed as Typist on NMR basis on 07.12.1981 and worked upto 06.12.1988. Subsequently, the petitioner was confirmed in the post of Gardener on 07.12.1988. Again, the petitioner was appointed as Typist on temporary basis on 19.12.1991 and regularized as Typist on 11.12.1998 with effect from 31.12.1991 in the scale of pay of Rs. 975-25-1150-80-1660. After the introduction of revised pay scale rules 1998 with effect from 01.01.1996 vide G.O.Ms.No.162 Finance (Pay Cell) Department dated 13.04.1998, the scale of pay for the post of Typist was changed as Rs.3200-85-4900 and the petitioner's pay scale was fixed as Rs.3200. The petitioner was conferred with Selection Grade from 31.12.2001 in the scale of pay of Rs.4000-100-6000. In the 6<sup>th</sup> Pay Commission vide G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009, new scale of pay was fixed for Typist (ordinary grade) as 5200-20200+2000 Grade Pay with effect from 01.01.2006. But the same was revised immediately as 5200-20200+2400. The revised pay scale rules 2009, did not deal with revised selection grade and special grade scales of pay for various posts corresponding to the ordinary grade. Hence, the

<https://www.mhc.gov.in/judis> Government constituted One Man Commission to examine the above issues and



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based on the report, the Government issued circular in Letter No.63305/Pay Cell/2010-1 dated 08.11.2010. For the post of Typist, the Selection Grade was granted as 9300-34800+4200 Grade Pay. The above revision was given effect from 01.01.2006 notionally with monetary benefits from 01.04.2011 and the petitioner's Selection Grade was granted as per proceedings dated 14.12.2011 and the petitioner is enjoying the same for the past 9 years.

3. In the meanwhile the petitioner was stagnating in the post of Typist for over 18 years and there are several persons like that of the petitioner who submitted representation to the government. The Government issued G.O.Ms.No. 45 P & AR Department dated 15.02.1994 and directed that those who have rendered more than 18 years of service as Typist will be upgraded as Typist Grade-I and the petitioner was upgraded on 20.07.2011 with effect from 01.01.2010. The scale of pay for Typist Grade-I was fixed as 5200-20200+2400 and subsequently immediately revised as 5200-20200+2800. The Selection Grade scale of pay corresponding to the ordinary grade scale of pay to Typist Grade-I namely 5200-20200+2800 is 9300-34800+4300. Hence, the petitioner is entitled to get the same as per Government Letter dated 08.11.2010. But the respondents have fixed only 9300-34800+4200 GP. Instead of granting 4300, the respondents have fixed as 4200. However, the Local Fund Audit objected to the



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fixing of scale of pay and has stated that the petitioner is entitled to 5200-20200+2800 and the excess amount of Rs.1,85,450/- ought to be recovered and also refixed the scale of pay from 01.01.2006. The second respondent vide letter dated 16.05.2014 has held that there is excess payment for the period from 01.04.2011 to 30.04.2014. The contention of the petitioner is that without issuing any notice, the respondents have refixed the scale of pay and also proceeded to recover the amount. The petitioner immediately submitted a representation dated 22.05.2014. Thereafter, the respondents sought clarification from the Board. The Board vide proceedings dated 12.08.2015 informed to all the circles that the scale of pay for the post Typist Grade-I as 5200-20200+2800 notionally from 01.01.2006 and monetary benefits from 01.04.2013. Subsequently, the respondents refixed the petitioner's scale of pay through letter dated 15.10.2015. The petitioner again submitted an objection on 27.10.2015. Since the respondents have not considered, the petitioner has filed this Writ Petition.

4. The respondents have filed a counter stating as per the revised scale of pay in 6<sup>th</sup> pay commission revision under G.O.Ms.No.234 dated 01.06.2009, the new scale of pay for ordinary Grade Typist was 5200-20200+2000 and the later Grade Pay was revised as 2400 notionally with effect from 01.01.2006 and monetary benefits with effect from 01.02.2011 vide G.O.Ms.No.45 dated



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10.02.2011 and the corresponding selection grade pay is 5200-20200+2800 and it is not 9300-34800+4200. The Government Letter dated 08.11.2010 states that the revised selection grade/special grade scales of pay indicated in Annexure-I is admissible only in cases where the scales of pay for the ordinary grade post were revised based on the recommendation of One Man Commission and subsequent Government Orders. But in the case of ordinary grade of Typist, the Grade Pay of Rs.2000 is revised as Rs.2400 with effect from 01.02.2011 vide G.O.Ms.No.45 dated 10.02.2011. But for the post of Typist in the ordinary grade, the scale of pay was not revised but only grade pay is revised from 2000 to 2400. Hence, the letter is not applicable to the post of Typist. As per G.O.Ms.No.45, the petitioner was upgraded as Typist Grade-I on 20.07.2011 with effect from 01.01.2010 and the scale of pay for Grade-I Typist was granted and not for Selection Grade, Grade-I Typist. Only after the completion of 10 years of service from ordinary Grade-I Typist, the petitioner will be eligible for Selection Grade Grade-I Typist. The Scale of Pay for Ordinary Grade, Grade I Typist is 5200-20200+2800 GP. The scale of pay for selection grade, Grade I Typist is 9300-34800+4200 GP. But the petitioner is not a Selection Grade, Grade I Typist. She is an ordinary Grade, Grade I Typist and hence, the petitioner is not eligible to get selection grade, Grade I Typist pay scale as on 01.01.2010. As per Local Fund Audit Para 20 for

<https://www.mhc.tn.gov.in/judis> the 1<sup>st</sup> half year 2012-2013 and para 5 of IAP (Internal Audit Party) for the 2<sup>nd</sup> half



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year 2010-2011 and full year of 2011-2012, the petitioner is entitled to get pay only in the scale of pay of Rs.5200-2022+2800 GP and concluded that the petitioner has received excess amount of Rs.1,85,458/- and refixed the scale from 01.01.2006 and directed to recover the excess payment as per rules. Therefore, the respondents prayed to dismiss this Writ Petition, since it is a wrong fixation.

5. Heard Mr.K.Rajkumar, learned counsel appearing for the petitioner and Mr.S.Sumesh, learned Standing Counsel appearing for the respondents and perused the records.

6. The petitioner was appointed as Typist on temporary basis on 19.12.1991 and regularized with effect from 31.12.1991. On completion of 10 years in the post of Typist, the petitioner was granted Selection Grade on 31.12.2001. The Typists in the Department submitted representation to the Government, since they were serving in the Government without any promotion for more than 18 years and hence requested to grant upgradation. The request of the Typists was considered and the Government has issued G.O.Ms.No.45 dated 15.12.1994 granting upgradation in the post of Typist and the post was designated as “Typist Grade-I” and the petitioner was granted “Typist Grade-I” post on 20.07.2011 with effect from 01.01.2010. Now the claim of the petitioner is to grant selection



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grade in the upgraded post. The petitioner would be entitled to selection grade in the upgraded post only on 01.01.2020. But the petitioner is wrongly claiming selection grade scale of pay in the post of Typist Grade-I, when there was 6<sup>th</sup> Pay Commission revision. The contention of the respondents is that the petitioner is entitled to selection grade of pay in the post of Typist when the 6<sup>th</sup> pay commission revision was made. However, erroneously the respondents have fixed selection grade scale of pay applicable to the upgraded post of Typist Grade I. This was pointed out by the Local Fund Audit and subsequently it was revised and recovery was ordered. The respondents have rightly come to the conclusion that the petitioner was wrongly fixed the selection grade of pay in the upgraded post of Typist Grade I at the time of 6<sup>th</sup> Pay Revision under G.O.Ms. No.234. Therefore, the petitioner is not entitled to the selection grade scale of pay for the upgraded post of Typist Grade I.

7. As far as recovery is concerned, it is seen before passing the impugned order, the respondents have not issued any notice. Then the case ought to be remitted back to the authorities for issuing notice and thereafter consider the issue. However, it is seen pending Writ Petition, the writ petitioner died and the legal heirs are substituted vide order dated 19.12.2021 in W.M.P.(MD)No.1134 of



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be waived. But the respondents are empowered to rectify the wrong fixation and refix the correct fixation.

8. Therefore, the respondents are restrained from recovering the said amount. However, the respondents are directed to refix the applicable scale of pay to the petitioner and consequently the family pension shall be fixed accordingly. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

9. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**08.02.2023**

Index : Yes / No

Internet : Yes

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**S.SRIMATHY, J**

Nsr

To

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493, Anna Salai,  
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