



W.P(MD)Nos.11267 & 12533 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P(MD)Nos.11267 & 12533 of 2016

and

W.M.P(MD)Nos.8623, 9477 & 9478 of 2016

W.P(MD)No.11267 of 2016

- 1.A.Gnanasakthivel
- 2.C.Rajalakshmi
- 3.V.Parameshvaran
- 4.S.Krishnan
- 5.P.Palani
- 6.P.Muthu
- 7.D.Sheikdawood
- 8.K.Jegadeesan
- 9.S.Arumugam
- 10.M.Natarajan
- 11.N.Thiyagarajan
- 12.S.Alagesan
- 13.G.Parameshwaran
- 14.O.Prabakaran



W.P(MD)Nos.11267 & 12533 of 2016

- 15.M.Selvam
- 16.J.Govindaraju
- 17.M.Anwar Alli
- 18.N.P.Jeyakumar
- 19.M.Ondimuthu
- 20.A.Ganesan
- 21.M.Chandrasekaran
- 22.J.Bernat
- 23.C.Sivanantham
- 24.V.Palanisamy
- 25.D.Chandrasekaran
- 26.S.Safiullah
- 27.C.Kumar
- 28.R.Sanglimuthu
- 29.K.Shanmugam
- 30.S.Stalin
- 31.M.Malaiyandi
- 32.V.Suresh
- 33.V.Kannan
- 34.V.Balamurugan
- 35.G.Sundar
- 36.S.Ameerkhan
- 37.S.Babu
- 38.R.Rajalingam
- 39.E.Rajendran



W.P(MD)Nos.11267 & 12533 of 2016

- 40.R.Sarasu
41.A.M.Raja
42.A.Ibramsha
43.N.Radhakrishnan
44.T.Maruthai
45.S.Mustafa
46.G.Nagakumar
47.S.Arumugam
48.S.Manoharan
49.P.Gunasekar
50.P.Sankar
51.P.Mohanraj
52.S.Ravikumar
53.S.Chandrakumar
54.N.Loganathan
55.A.Rajendran
56.B.Mohan
57.U.Arumugam
58.V.Maruthamuthu
59.A.Sivam
60.P.Marimuthu
61.A.Perumal
62.K.Ayyadurai
63.R.Prabakaran
64.R.Kuppusamy



W.P(MD)Nos.11267 & 12533 of 2016

WEB COPY

65.A.Govindaraj

66.T.Senthilkumar

... Petitioners

Vs.

1.The Principal Secretary to the Government,
Government of Tamil Nadu,
Finance (Pay Cell) Department,
Fort St. George,
Chennai - 9.

2.The Director of Municipal Administration,
Chepakkam,
Chennai - 5.

3.The Director of Local Fund Audit,
Kurazhagam,
Chennai - 108.

4.The Commissioner,
Tiruchirapalli City Municipal Corporation,
Tiruchirapalli.



W.P(MD)Nos.11267 & 12533 of 2016

WEB COPY

5.The Assistant Commissioner,
K.Abhisekapuram Zone,
Tiruchirapalli City Municipal Corporation,
Tiruchirapalli.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to the impugned order passed by the fifth respondent in Proceeding in Na.Ka.No.14873/2015/C2/(Ko-Abi) dated 28.04.2016 and quash the same.

For Petitioners : Mr.V.Panneer Selvam

For Respondents : Mr.P.Subbaraj - for R1 to R3

Special Government Pleader

Mr.K.R.Kishore Ram - for R4 & R5

for M/s.R.B.Associates



W.P(MD)Nos.11267 & 12533 of 2016

W.P(MD)No.12533 of 2016

- 1.M.Selvaraj
- 2.S.Rajagopalan
- 3.M.Nagarajan
- 4.M.Saraswathi
- 5.K.Ravichandran
- 6.V.Sampath
- 7.V.Asaithambi
- 8.R.Sinthan
- 9.V.Jayakumar
- 10.A.Selvam
- 11.C.Chandran
- 12.S.Rajendran
- 13.M.Aliyaselvam
- 14.A.Prabhu
- 15.S.Murugash
- 16.D.Kanagaraj
- 17.P.Periyasamy
- 18.S.Periyasamy
- 19.T.Lakshmanan
- 20.P.Marimuthu
- 21.K.Kumar @ Rama Konar
- 22.S.Kamaraj
- 23.R.Ramasamy
- 24.N.Vijayakumar



W.P(MD)Nos.11267 & 12533 of 2016

25.Viswanathan

26.E.Santhanam

27.R.Palanisamy

28.S.M.Rajaram

29.P.K.Dhormupandiyar

30.M.Murugesan

31.K.Krishnan

32.P.Mathankumar

33.S.Askhar Ali

... Petitioners

Vs.

1.The Principal Secretary to the Government,
Government of Tamil Nadu,
Finance (Pay Cell) Department,
Fort St. George,
Chennai - 9.

2.The Director of Municipal Administration,
Chepakkam,
Chennai - 5.

3.The Director of Local Fund Audit,
Kurazhagam,
Chennai - 108.



W.P(MD)Nos.11267 & 12533 of 2016

WEB COPY

4.The Commissioner,
Tiruchirapalli City Municipal Corporation,
Tiruchirapalli.

5.The Assistant Commissioner,
Srirangam Zone,
Tiruchirapalli City Municipal Corporation,
Tiruchirapalli.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to the impugned order passed by the fifth respondent in Proceeding in Na.Ka.No.E1/9069/2015/(Sri) dated 28.04.2016 and quash the same.

For Petitioners : Mr.V.Panneer Selvam

For Respondents : Mr.P.Subbaraj - for R1 to R3

Special Government Pleader

Mr.K.R.Kishore Ram - for R4 & R5

for M/s.R.B.Associates



W.P(MD)Nos.11267 & 12533 of 2016

WEB COPY

COMMON ORDER

Since the issue involved in these writ petitions is one and the same, they have been taken up together and disposed of by this common order.

2. Challenging the orders of recovery passed by the fifth respondent Corporation on 28.04.2016, these writ petitions have been filed.

3. The petitioners are working in the respondent Corporation. The issue arises in these writ petitions is as per the Government Order, the scale of pay of the petitioners was revised to include grade pay, as a result that the fixation of pay was at Rs.5,200 – 20,200 + 1,900 and they have received the said benefit from 2010 onwards. However, all of a sudden, respective impugned orders came to be passed, seeking to recover the amounts allegedly paid in excess to the petitioners from their monthly salary by way of instalment. Challenging the said recovery orders, these writ petitions have been filed.



W.P.(MD)Nos.11267 & 12533 of 2016

WEB COPY

4. The learned counsel appearing for the petitioners would submit that the issue involved in these writ petitions is no longer *res integra* and it has been decided by this Court in W.P.(MD).No.669 of 2018 and this Court, by order dated 19.11.2021, disposed of the Writ Petition on the ground of violation of principles of natural justice. Hence, the respective impugned orders are liable to be set aside.

5. The learned Standing counsel appearing for the respondents 4 and 5 did not dispute the facts submitted by the learned counsel for the petitioners.

6. Heard the learned counsel for the petitioners, learned Special Government Pleader appearing for the respondents 1 to 3 and the learned counsel appearing for the respondents 4 and 5.

7. A similar issue was raised before this Court in W.P.(MD).No.669 of 2018 and the learned Single Judge of this Court, by order dated 19.11.2021, has held as follows:

“47. For a decision on whether the re-fixation is



W.P(MD)Nos.11267 & 12533 of 2016

proper, the 2010, 2012 and 2015 proceedings are to be reconciled. A copy of audit objection has not been placed on file. However, proceedings dated 21.05.2015 refers to the objection to the effect that some certain posts classified under the category 'other trade posts' (unskilled) in the annexure to the 2012 letter cannot be considered as technical posts as they do not involve technical skill and therefore, higher category of pay cannot be granted to such categories.

48. While exercise of determining the appropriate categorization of posts is entirely within the domain of the State, such categorization must be seen to be based on proper and appreciable differentia. A comparison of the categorization of 'other trade posts' in proceedings dated 01.10.2012 and Annexure-B of proceedings dated 21.05.2015 would show that not all the posts differentiated as 'other trade posts' have been denied the effect of the pay enhancement.

49. Sixty nine (69) trade posts are covered in proceedings dated 01.10.2012 and 36 stand excluded in 2015. Upon a comparison of the two lists, I find that among those retained in the technical trade posts in



W.P(MD)Nos.11267 & 12533 of 2016

the category of 'cleaners' are fountain cleaner, motor cleaner, pipe line cleaner, pump cleaner, pump house cleaner, reservoir cleaner, and filter beed cleaner, whereas tank cleaner, drain cleaner, silt pucket cleaner and lorry cleaner have been excluded.

50. Then again while tank watchman, park watchman, head works watchman, reservoir watchman, spring watchman, water supply watchman, thoppu watchman, market watchman, bus stand watchman, boarding & lodging watchman, weekly market watchman, kalyana mandapa watchman and TB watchman stand excluded, borewell watchman and pump house watchman continue to have the benefit of increased pay.

51.I am thus, at a loss to understand the basis of differentiation within the two categories as above. To my mind, the exercise has been done mechanically simply following the audit objection and this is arbitrary. The respondents must apply their minds in a proper, scientific manner in the categorization of posts as 'skilled' and 'unskilled' prior to arriving at a decision in regard to the exclusions. Let this exercise be done forthwith, bearing in mind the duties and



W.P.(MD)Nos.11267 & 12533 of 2016

functions performed by all categories of employees in category 5 of proceedings issued in 2012. Impugned order dated 30.10.2017, not being based upon proper categorization of the trade/non-trade posts is set aside qua the aspect of re-fixation of pay.”

8. By following the aforesaid judgment another learned Single Judge has passed an order dated 02.06.2023 in W.P.(MD) No.12819 of 2016.

9. On the other hand, the learned counsel for the respondents placed a copy of the common order, dated 08.08.2017 passed by this Court in W.P.No.15937 of 2017 and Batch. On careful perusal of the same, it appears that the said order also in favour of the petitioners. While allowing the said Writ Petitions this Court followed the legal principle in this regard as settled by the Hon'ble Supreme Court of India in the case of ***State of Punjab v. Rafiq Masih reported in (2015) 4 SCC 334***. It is relevant to extract paragraph No.18 of the judgment stated supra:

"18.It is not possible to postulate all situations



W.P(MD)Nos.11267 & 12533 of 2016

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 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 in 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



W.P(MD)Nos.11267 & 12533 of 2016

such an extent, as would far outweigh the equitable balance of the employer's right to recover."

10. In the light of the orders passed by this Court as stated supra, applying the ratio laid down in those orders, these Writ Petitions are allowed with the same terms.

11. No costs.

12. Consequently, the connected Miscellaneous Petitions are closed.

13.07.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes / No

rm



W.P(MD)Nos.11267 & 12533 of 2016

To
WEB COPY

- 1.The Principal Secretary to the Government,
Government of Tamil Nadu,
Finance (Pay Cell) Department,
Fort St. George,
Chennai - 9.
- 2.The Director of Municipal Administration,
Chepakkam,
Chennai - 5.
- 3.The Director of Local Fund Audit,
Kurazhagam,
Chennai - 108.
- 4.The Commissioner,
Tiruchirapalli City Municipal Corporation,
Tiruchirapalli.
- 5.The Assistant Commissioner,
K.Abhisekapuram Zone,
Tiruchirapalli City Municipal Corporation,
Tiruchirapalli.
- 6.The Assistant Commissioner,
Srirangam Zone,
Tiruchirapalli City Municipal Corporation,
Tiruchirapalli.



WEB COPY



W.P(MD)Nos.11267 & 12533 of 2016

BATTU DEVANAND, J.

rm

W.P(MD)Nos.11267 & 12533 of 2016

13.07.2023