IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. Nos.11760, 11770, 11773, 11763, 11767, 11901, 11907, 11911, 11903, 12221, 12195, 12222, 12224, 12227, 12263,19544 & 19554 of 2020
and W.M.P.Nos.14477, 14461, 14456, 14457, 14462, 14468, 14469, 14472, 14474, 14480, 14629, 14630, 14634, 14635, 14620, 14622, 14624, 14626, 14978, 14932, 14933, 14980, 14979, 14982, 14983, 14977, 14985, 14986, 15039, 15042, 24169, 24171, 24164 & 24166 of 2020

W.P.No.11760/2020
and W.M.P.No.14456 & 14457/2020

S.Priya ... Petitioner

/vs/

1. The Director of Local Fund Audit,
   Integrated Complex for Finance Department,
   Animal Husbandry Hospital Complex,
   Teynampet,
   Chennai – 600 018.

2. The Commissioner,
   Tiruppur Corporation,
   Tiruppur. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records in pursuant to the impugned order issued by the second respondent in proceedings in Na.Ka.No.C.1/0150/2020 dated 28.02.2020 and quash the same and consequently direct the respondents to restore the pay of the petitioner in the scale of pay of Rs.5200-Rs.20200 + Grade Pay of Rs.1900 with effect from the date of her initial appointment as Unskilled Worker on 20.03.2015 with all consequential service and monetary benefits.

For Petitioners:

in all W.P's : Mr.R.Prem Narayan

For Respondents:

in all W.P's. : Mr.S.Silambanan
Senior Counsel
for Mr.P.Shanthi for R2

in W.P.Nos.11760, 11763,
11767, 11770, 11773,
11901, 11903, 11907,
11911, 12221, 12195/2020 : Mr.V.P.R.Elamparithi
Additional Govt. Pleader for R1

in W.P.Nos. 12222, 12224,
12227, 12263,19544
& 19554/2020 : Mr.M.Rajendran

Additional Govt. Pleader for R1

COMMON ORDER

These writ petitions are filed challenging the order of reduction of pay or for recovery of alleged excess payment made by the petitioners in pursuant to the Government Order issued in G.O.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010

2. Mr.R.Prem Narayan, the learned counsel for the petitioners, submitted that the issue raised in the present writ petitions are the subject matters of the writ petitions in W.P.No.1828 of 2020 & batch and hence the benefit of the said order should be extended to the petitioners as well.

3. Mr.S.Silambanan, learned Senior Counsel for the respondents, submitted that G.O.Ms.No.338 dated 26.08.2010 is applicable only to those persons who have been in service on the date when the said Government Order was issued; but some of the petitioners involved in these batch of cases have joined subsequent to the issuance of the said Government Order and hence the benefit of the order dated 22.11.2023 made in W.P.No.1828/2020 & batch, shall not be extended to them.

4. A similar issue was dealt in the said Writ Petition in W.P.No.1828/2020 & batch and the following discussions, observations and interpretations have been given in the said order:

> *" **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 vaates 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. 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 ofRs.3050-4590 (pre-revised) recommended to Unskilled and Semi-skilled employee (pre entry level Grade-Il 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-Il trade posts and also taking into account the "plus two" qualification prescribed for certain trade courses, the Grade | 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--1.

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.

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 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 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."*

5. The Government Order in G.O.Ms.No.338 dated 26.08.2010 is an one time measure and hence the benefit of the said Government Order cannot be extended to those persons who are appointed subsequent to the issuance of the said Government Order.

6. So far as the recovery is concerned, the respondents themselves have admitted in the counter that as per G.O.Ms.No.286 Finance (Pension)

Department, dated 28.08.2018, the recovery of excess payments alleged to have been made for Clause III and Clause IV (Group C & Group D) is not permissible. Since the petitioners against whom the recovery has been initiated are all the persons who are not in Group A and Group B services, the G.O.Ms.286 dated 28.08.2018 is squarely applicable to them and hence the recovery orders issued against the petitioners are liable to be quashed.

7. So far as the reduction of pay is concerned, the order of reduction of pay holds good only as against those persons who have joined service subsequent to the issuance of G.O.Ms.No.338 dated 26.08.2010. However, in view of the order made in W.P.No.1828/2021 & batch, the order for reduction of pay as against those persons who have joined in service prior to the issuance of G.O.Ms.No.338 dated 26.08.2010 shall be liable to be set aside

8. In view of the above stated reasons (i) the writ petitions in W.P.Nos.12221, 12195, 12222, 12224, 19544 and 19554 of 2020 are allowed by quashing the impugned order dated 28.02.2020 passed in

Na.Ka.No.C1/0501/2020 and the respondents are directed to restore the pay of the petitioners in the scale of pay Rs.5200-Rs.20200 + Grade pay of Rs.1900 from the date of their respective eligibility; (ii) the writ petitions in W.P.Nos.11760, 11763, 11767, 11770, 11773, 11901, 11903, 11907, 11911, 12227 & 12263 of 2020 are partly allowed to the extent of quashing the recovery order alone with a direction to the respondents to refund the recovered amount, if recovery has already been made, within a period of four weeks from the date of receipt of a copy of this order. No costs.

01.02.2024

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation :Yes / No
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To:

1. The Director of Local Fund Audit,
   Integrated Complex for Finance Department,
   Animal Husbandry Hospital Complex,
   Teynampet,
   Chennai – 600 018.

2. The Commissioner,
   Tiruppur Corporation,
   Tiruppur.

R.N.MANJULA ,J.

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