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W.A.Nos.3621 & 3640 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2024

CORAM :

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE C. SARAVANAN

W.A.Nos.3621 & 3640 of 2024

1. The Director of Town Panchayat
7th and 8th Urban Administrative Building
No.78, Santhome High Road
Chennai – 600 028.
2. The Assistant Director of Town Panchayat
District Collector Office
Vellore District. .. Appellants
in both W.As

Vs.

1. M.Kandavel
2. The Executive Officer
Thakkolam Town Panchayat
Arakkonam Taluk, Ranipet District.
3. The Director (Local Fund Audit)
No.571, Officer Building
Saidapet Veterinary Hospital Campus
4th Floor, Anna Salai
Nandanam, Chennai – 600 035. .. Respondents in
W.A.No.3621 of 2024
1. C.Ranganathan
2. G.Vijayabaskaran
3. The Executive Officer
Odugathur Town Panchayat
Anaicut Taluk, Vellore District.



W.A.Nos.3621 & 3640 of 2024

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4. The Director (Local Fund Audit)

No.571, Officer Building
Saidapet Veterinary Hospital Campus
4th Floor, Anna Salai
Nandanam, Chennai – 600 035.

Respondents in
W.A.No.3640 of 2024

Prayer in W.A.No.3621 of 2024: Appeal filed under Clause 15 of the Letters Patent, against the order made in W.P.No.337 of 2022 dated 04.07.2023; and

Prayer in W.A.No.3640 of 2024: Appeal filed under Clause 15 of the Letters Patent, against the order made in W.P.No.341 of 2022 dated 04.07.2023.

For the Appellants : Mr.R.Neelakandan
in both W.As Additional Advocate General
assisted by Mr.C.Selvaraj
Additional Government Pleader

For R1 in : Mr.Thirumoorthy
W.A.No.3621 of 2024
& for R1 & R2 in
W.A.No.3640 of 2024

For R2 in : Dr.T.Seenivasan
W.A.No.3621 of 2024 Standing Counsel
& for R3 in
W.A.No.3640 of 2024

COMMON JUDGMENT

(Judgment of the Court was authored by R.SURESH KUMAR, J.)

These intra-Court appeals have been directed against the common order passed by the Writ Court in W.P.Nos.337 and 341 of 2022 dated 04.07.2023.

2.1. The Grade Pay of the respondents/writ petitioners, which



W.A.Nos.3621 & 3640 of 2024

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was fixed originally as Rs.1900/-, was reduced to Rs.1300/-. That was the issue which was put under challenge before the Writ Court.

2.2. The learned Writ Court, having taken note of the earlier orders passed on the same issue in W.P.(MD) No.669 of 2018 dated 19.11.2011 and also after having extracted paragraphs 47 to 49 of the said order, has allowed W.P.Nos.337 & 341 of 2022 by setting aside the order impugned therein by following the same. Therefore, it has become clear that the learned Single Judge has simply followed the dictum of the other learned Single Judge, who passed the order in W.P.(MD) No.669 of 2018 dated 19.11.2011.

2.3. Except this no other independent discussion have been made and no other point seems to have been canvased on behalf of the respondents/writ petitioners before the Writ Court for its consideration.

3.1. We have gone through the orders passed by the other learned Single Judge at Madurai Bench of this Court in W.P.(MD)No.669 of 2018 dated 19.11.2021, where, the learned Single Judge, in paragraph 43 of the order, has observed as under:



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W.A.Nos.3621 & 3640 of 2024

" 43.It is based upon the above judgement that the decision under letter dated 07.10.2020 has been arrived at, deciding to waive the recovery for the past period, and fixing the effective date of re-fixation of the salary as 01.10.2020 onwards. In light of the discussion in the preceding paragraphs, and the decision of the State in proceedings dated 07.10.2020, the recovery sought to be effected/or effected,till date, is liable to be set aside and I do so."

3.2. The learned Single Judge has further made observations to the following effect:

"47.For a decision on whether the re~fixation is 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 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 watchmanstand excluded, borewell watchman and pump house watchman continue to have the benefit of increased pay."

In fact, these paragraphs, that is paragraphs 47 to 49, have been extracted in the impugned common order herein by the learned Single Judge.

3.3. However, ultimately, in the operative portion of the order dated 19.11.2021 made in W.P.(MD)No.669 of 2018, in paragraphs 51 and 52, the learned Single Judge has passed the following orders:

"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,



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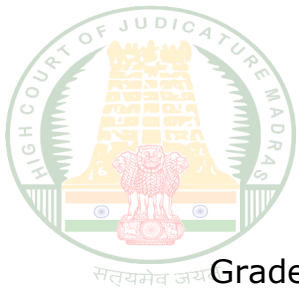
W.A.Nos.3621 & 3640 of 2024

bearing in mind the duties and functions performed by all categories of employees in category 5 of proceedings issued in 2012. Impugned order dater 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.

52.This writ petition is disposed in the above terms. Miscellaneous Petitions closed and there is no order as to costs."

3.4. By reading the said operative portion of the order made in W.P.(MD)No.669 of 2018, where, even though it has been observed by the learned Single Judge that the categorization of post as "skilled" and "un-skilled" has not been properly categorized and for which, a direction has been given and ultimately, the learned Single Judge, though had set aside the impugned order dated 30.10.2017 in the said Writ Petition for not being based on the proper categorization of the trade/non-trade posts, it was for the purpose of re-fixation of pay, such a setting aside of the order was made.

4. Therefore, pursuant to the order passed by the Writ Court in W.P.(MD) No.669 of 2018, it is brought to our notice by the learned Additional Advocate General appearing for the appellants that after giving notice to the concerned parties, the re-categorization has been made, based on which re-fixation of



W.A.Nos.3621 & 3640 of 2024

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Grade Pay also has been made, as against which, whether they have agitated before the Court of law or not is not known, but anyhow, pursuant to the order passed by the Writ Court in W.P.(MD) No.669 of 2018 dated 19.11.2021, since re-categorization has been made, even that chance has not been given in the present case by the impugned common order passed by the Writ Court, wherein the order impugned therein alone has been set aside and the learned Single Judge allowed the writ petitions, giving no room for any reconsideration on the part of the employer, as has been directed by the other learned Single Judge of the Writ Court in W.P.MD.No.669 of 2018.

5. *Mr.Thirumoorthy*, learned counsel appearing for the respondents/writ petitioners, though has made an attempt to make additional submissions with regard to the merits of the issue as to how such fixation has been made after the recommendation of the One-Man Committee etc, those arguments whether have been made before the learned Single Judge has not been canvassed by the respondents/writ petitioners and in fact, the learned Single Judge, through the impugned common order, has simply followed the order passed by another learned Single Judge in W.P.MD.No.669 of 2018 and that was the only criterion taken by the learned Single



W.A.Nos.3621 & 3640 of 2024

Judge in allowing the writ petitions.

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6. If that being the criterion taken by the learned Single Judge in allowing the writ petitions, those writ petitions should have been allowed by setting aside the impugned order therein for the purpose of re-fixation of pay, as that was the dictum made by the other learned Single Judge in W.P.(MD) No.669 of 2018 in paragraph 51, as has been extracted herein above.

7. Therefore, to that extent, we feel that the common order impugned requires minor modification to the following effect:

(i) The impugned order before the Writ Court, since has been set aside by the learned Single Judge in paragraph 5 of the impugned common order, further the issue now being placed before the employer/appellants for reconsideration or re-fixation of the pay after re-categorization, as has been stated or observed by the learned Single Judge in order dated 19.11.2011 made in W.P.(MD) No.669 of 2018, therefore, to that extent, the common order impugned is modified, thus, now, the issue is remitted back to the



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W.A.Nos.3621 & 3640 of 2024

appellant/employer for reconsideration and re-fixation of the posts for the purpose of re-fixation of service benefits, of course, after giving notice to the respondents/writ petitioners.

8. With these modifications, these writ appeals are disposed of. There shall be no order as to costs. Consequently, C.M.P.Nos.28358 & 28589 of 2024 are closed.

(R.S.K., J.) (C.S.N, J)
12.12.2024

Neutral Citation:Yes/No

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To:

1. The Executive Officer
Thakkolam Town Panchayat
Arakkonam Taluk, Ranipet District.
2. The Executive Officer
Odugathur Town Panchayat
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W.A.Nos.3621 & 3640 of 2024

R. SURESH KUMAR, J.
AND
C. SARAVANAN, J.
(drm)

W.A.Nos.3621 & 3640 of 2024

12.12.2024