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W.P.No.33624 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.33624 of 2023
& WMP Nos.33456, 33455 & 33457 of 2023 and
W.M.P.No.4981 of 2024

- 1.A.P.Kaliyamoorthi
- 2.T.Murugesan
- 3.G.Sundaram
- 4.N.Shanmugam
- 5.G.Kathamuthu
- 6.A.Boopalan
- 7.N.Jayaraman
- 8.K.John Kasi Rao
- 9.S.Gunasekaran
- 10.P.Murugesan
- 11.K.Mani
- 12.G.Srinivasan
- 13.Vaidyalingam
- 14.M.Selvarangam
- 15.P.Thirumalai
- 16.V.Subramanian
- 17.V.Ramalingam

.... Petitioners

-Vs-

- 1 The Government Of Tamilnadu
Represented By Its Principal Secretary
Finance Department Fort St. George
Chennai 600009.
- 2 The Principal Secretary To Government
Public Works Department Fort St.
George Chennai 600009.
- 3 The Engineer In Chief



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Water Resources Department And Chief
Engineer (general) Public Works Department
Chennai 600005.

- 4 The Deputy Chief Engineer
WRO Additional Charge O/o.chief Engineer
WRO Trichy Region Trichy 20.
- 5 The Executive Engineer
WRO Cauvery Basin Sub-division Thanjavur.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the 4th respondent herein in Ne.Mu.Letter No. C4/9447/2020 dated 15.09.2023 and the consequential order of the 5th respondent herein issued Letter No. Ko.1603/2023/Ne.A.3 dated 19.9.2023 and quash the same and consequentially direct the respondents to confer all benefits to the petitioners with effect from 15.12.1984 with interest as per the amendment issued in G.O.Ms.No.12 Public Works (C2) Department dated 20.01.2009.

For Petitioners : Mr.R.S.Anandan

For Respondents : Mr.P.Balathandayutham
Special Government Pleader

ORDER

This writ petition has been filed challenging the letter dated 15.09.2023 of the fourth respondent and the consequent letter of the fifth respondent dated 19.09.2023 and for a direction to the respondents to confer all the benefits to the petitioners as per the amendment issued to G.O.Ms.No.12 dated 20.01.2009.



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2. The petitioners were appointed as Irrigation Assistants in the Public Works Department during the years 1968 to 1977. The service particulars of the petitioners are tabulated hereunder:

S.No.	Petitioner	Appt.Date	Selection Grade	Special Grade	Senior Grade	Date of Retirement
1.	A.P.Kaliyamoorthi	15.09.1973	15.09.1983	15.09.1993	14.09.2003	03.02.2009
2.	T.Murugesan	12.07.1977	12.07.1987	12.07.1997	12.07.2007	30.09.2009
3.	G.Sundaram	16.01.1968	16.01.1980	17.01.1990	17.01.2000	31.03.2000
4.	N.Shanmugam	06.05.1970	06.05.1985	06.05.1995	05.05.2005	03.02.2009
5.	G.Kathamuthu	01.08.1973	01.08.1983	01.08.1993	01.08.2003	03.02.2009
6.	A.Boopalan	25.02.1970	25.02.1985	25.02.1995	25.02.2005	31.12.2005
7.	N.Jayaraman	05.10.1972	17.03.1984	17.03.1994	17.03.2004	30.06.2008
8.	K.John Kasi Rao	02.09.1970	02.09.1985	02.09.1995	02.09.2005	03.02.2009
9.	S.Gunasekaran	07.08.1973	06.08.1983	01.06.1998	-	30.11.2002
10.	P.Murugesan	06.05.1970	06.05.1985	06.05.1995	05.05.2005	30.09.2008
11.	K.Mani	14.07.1972	13.07.1987	01.01.1998	-	30.09.2008
12.	G.Srinivasan	06.05.1970	06.05.1985	06.05.1995	06.05.2005	31.05.2006
13.	Vaidiyalingam	12.09.1972	12.09.1982	12.09.1992	12.09.2002	31.01.2008
14.	M.Selvarangam	04.08.1973	04.08.1983	04.08.1993	04.08.2003	30.11.2008
15.	P.Thirumalai	26.11.1970	26.11.1980	26.11.1990	26.11.2000	31.10.2003
16.	V.Subramanian	09.07.1970	09.07.1985	09.07.1995	09.07.2005	28.02.2009
17.	V.Ramalingam	27.05.1970	30.08.1985	30.08.1995	30.08.2005	30.06.2006

3. The further case of the petitioner is that on completion of 10 years of service as Irrigation Assistant, they are eligible for promotion to the post of Work Inspector. A clarification order was issued by the third respondent on 13.05.1999, whereby it was stated that the Irrigation Assistants who have put in 10 years of service will be eligible for the scale of pay of Rs.950-Rs.1500/- and those who have put in 20 years of service



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are entitled for a scale of pay of Rs.1200-Rs.2040/-. The same was cancelled based on the letter of the second respondent dated 23.09.1999.

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4. The petitioners moved the Tamil Nadu Administrative Tribunal by filing O.A.Nos.7484 and 7626 of 1999. The applications were entertained and stay order was also passed by the Tribunal directing that no recovery must be made from the petitioners.

5. The applications were thereafter transferred to this Court, which were taken on file in W.P.Nos.39835 and 39836 of 2006 and which were disposed of by a common order dated 21.07.2010 in the following terms:

" The petitioners have filed the Original Applications on the file of the Tamil Nadu Administrative Tribunal challenging the orders passed by the respondents 1 and 3.

2. The Tribunal, while entertaining the above said applications, granted interim stay against the orders passed by the respondents 1 and 3. In view of the interim stay granted by the Tribunal, no action was taken against the petitioner. During the pendency of the present writ petitions, the Government have issued G.O.Ms.No.12, Public Works (C2) Department dated 20.01.2009 amending the Special Rules for the Tamil Nadu Engineering Subordinate Service with effect from 2nd August, 1984. By virtue of the



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amendment, all the Irrigation Assistants, on completion of 10 years, are made eligible to get the scale of pay of Selection Grade and on completion of 20 years, they will be eligible to get the scale of pay of Special Grade. In that view of the matter, it is informed that no order is required, as all the Irrigation Assistants have retired from service.

In view of the amendment, the clarification order issued, which is under challenge, will automatically go in vain. Therefore, no orders are required to be passed in the present writ petitions, as nothing survives for consideration. Accordingly, the present writ petitions are closed. No costs."

6. The fourth respondent, instead of giving effect to the amendments made to the Special Rules, passed the impugned order dated 15.09.2023 and a consequential letter was issued by the fifth respondent directing to refix the scale of pay of the petitioners and to recover the excess payments made to the petitioners. The said order of refixation and recovery that was made after the retirement of the petitioners has been put to challenge in the present writ petition.

7. The respondents have filed a counter. They have taken a stand that the G.O.Ms.No.250 dated 21.03.1984 is concerned only with special temporary posts and not for movement of selection grade or special grade. According to the respondents, the petitioners have misquoted the Government Order and therefore the scale of pay that was fixed to the petitioners was found to be erroneous, which was sought to be



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revised and the excess pay was also sought to be recovered from the petitioners.

Accordingly, the respondents have justified the action taken by them.

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8. Heard Mr.R.S.Anandan, learned counsel for the petitioners and Mr.P.Balathandayutham, learned Special Government Pleader for the respondents.

9. In the considered opinion of this Court, all the petitioners have retired long back during the period from 2002 to 2009. At this length of time, attempts are being made to refix the scale of pay of the petitioners and to recover the excess amounts paid to the petitioners. The employer-employee relationship ceases the moment the petitioners retire from service. All of a sudden, such proceedings cannot be initiated behind the back of the petitioners and that too when the petitioners are in the evening of their life. Hence, the revision of the scale of pay of the petitioners and the recovery proceedings initiated by the respondents are liable to be interfered with by this Court. There is yet another reason as to why recovery proceedings cannot be initiated against the petitioners. The so-called excess pay was made to the petitioners not due to the fault of the petitioners. Therefore, there is no question of recovering the amounts from the petitioners after all the petitioners have already retired from service long back.

10. In the light of the above discussion, the impugned proceedings of the



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respondents are hereby quashed and this writ petition stands allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No

NCS : Yes/No

KST

To

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Finance Department Fort St. George
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- 2 The Principal Secretary To Government
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- 3 The Engineer In Chief
Water Resources Department And Chief
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N.ANAND VENKATESH, J.

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