



WEB COPY



W.P.Nos.34189, 34380, 35473 & 36269 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.02.2024

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.34189, 34380, 35473 & 36269 of 2023 and
WMP.Nos.34066, 34286 & 35444 of 2023

WP.No.34189 of 2023

R.Manimaran

...Petitioner

Vs.

- 1.The Government of Tamilnadu,
Represented by its Secretary,
Finance Department,
Fort St.George,
Chennai 600 009
- 2.The Government of Tamilnadu,
Represented by its Secretary,
Municipal Administration and
Water Supply Department,
Fort St.George,
Chennai 600 009
- 3.The Director,
Town Panchayat Administration,
Raja Annamalaipuram,
Chennai 600 028
- 4.The Director,
Local Fund Audit,
Integrated Complex for Finance Department,
5th Floor, Saidapet, Animal Husbandry Hospital Campus,
Nandanam, Chennai-35
- 5.The Executive Officer,
Ponnamaravathy Selection Grade,



W.P.Nos.34189, 34380, 35473 & 36269 of 2023

Town Panchayat,
Pudukottai District

...Respondents

WEB COPY

Prayer :- Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records of the third respondent herein in his proceeding Na.Ka.No.1222/2020/A3 dated 07.10.2020 insofar as reducing the scale of pay of the petitioner including grade pay and quash the same and consequently direct the respondents to pay the revised scale of pay of Rs.5200-20200+1900 Grade Pay with all monetary and other attendant benefits to the petitioner with effect from 01.01.2006 as per GO.Ms.No.338 Finance Department dated 26.08.2010.

For Petitioner : Mr.K.Raja

For Respondents : Mrs.R.L.Karthika,
Government Advocate

WP.No.36269 of 2023

1.V.Palanivel
2.R.Puliyar
3.K.Selvam
4.V.Suresh

...Petitioners

Vs.

1.The Government of Tamilnadu,
Represented by its Secretary,
Finance Department,
Fort St.George,
Chennai 600 009
2.The Government of Tamilnadu,
Represented by its Secretary,
Municipal Administration and
Water Supply Department,
Fort St.George,



W.P.Nos.34189, 34380, 35473 & 36269 of 2023

Chennai 600 009

3.The Director,

Town Panchayat Administration,

Raja Annamalaipuram,

Chennai 600 028

4.The Director,

Local Fund Audit,

Integrated Complex for Finance Department,

5th Floor, Saidapet, Animal Husbandry Hospital Campus,

Nandanam, Chennai-35

5.The Executive Officer,

Alangudi Town Panchayat,

Pudukottai District

...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records of the third respondent herein in his proceeding Na.Ka.No.1222/2020/A3 dated 07.10.2020 insofar as reducing the scale of pay of the petitioner including grade pay and quash the same and consequently direct the respondents to pay the revised scale of pay of Rs.5200-20200+1900 Grade Pay with all monetary and other attendant benefits to the petitioner with effect from 01.01.2006 as per GO.Ms.No.338 Finance Department dated 26.08.2010.

For Petitioners : Mr.K.Raja

For Respondents : Mrs.R.L.Karthika,
Government Advocate

WP.No.34380 of 2023

1.C.Somaiah

2.K.Ravi

3.M.Babu

4.C.Mutharasan

...Petitioners

Vs.



W.P.Nos.34189, 34380, 35473 & 36269 of 2023

- 1.The Government of Tamilnadu,
Represented by its Secretary,
Finance Department,
Fort St.George,
Chennai 600 009
 - 2.The Government of Tamilnadu,
Represented by its Secretary,
Municipal Administration and
Water Supply Department,
Fort St.George,
Chennai 600 009
 - 3.The Director,
Town Panchayat Administration,
Raja Annamalaipuram,
Chennai 600 028
 - 4.The Director,
Local Fund Audit,
Integrated Complex for Finance Department,
5th Floor, Saidapet, Animal Husbandry Hospital Campus,
Nandanam, Chennai-35
 - 5.The Executive Officer,
Ponnamaravathy Selection Grade Town Panchayat,
Pudukottai District
- ...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records of the third respondent herein in his proceeding Na.Ka.No.1222/2020/A3 dated 07.10.2020 insofar as reducing the scale of pay of the petitioner including grade pay and quash the same and consequently direct the respondents to pay the revised scale of pay of Rs.5200-20200+1900 Grade Pay with all monetary and other attendant benefits to the petitioner with effect from 01.01.2006 as per GO.Ms.No.338 Finance Department dated 26.08.2010.

For Petitioners : Mr.K.Raja



WEB COPY



W.P.Nos.34189, 34380, 35473 & 36269 of 2023

For Respondents

: Mrs.R.L.Karthika,
Government Advocate

WP.No.35473 of 2023

K.Ganesan

...Petitioner

Vs.

- 1.The Government of Tamilnadu,
Represented by its Secretary,
Finance Department,
Fort St.George,
Chennai 600 009
- 2.The Government of Tamilnadu,
Represented by its Secretary,
Municipal Administration and
Water Supply Department,
Fort St.George,
Chennai 600 009
- 3.The Director,
Town Panchayat Administration,
Raja Annamalaipuram,
Chennai 600 028
- 4.The Director,
Local Fund Audit,
Integrated Complex for Finance Department,
5th Floor, Saidapet, Animal Husbandry Hospital Campus,
Nandanam, Chennai-35
- 5.The Executive Officer,
Arimalam Town Panchayat,
Pudukottai District

...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records of the third respondent herein in his proceeding Na.Ka.No.1222/2020/A3 dated 07.10.2020 insofar as reducing the scale of pay of the petitioner including



W.P.Nos.34189, 34380, 35473 & 36269 of 2023

grade pay and quash the same and consequently direct the respondents to pay the revised scale of pay of Rs.5200-20200+1900 Grade Pay with all monetary and other attendant benefits to the petitioner with effect from 01.01.2006 as per GO.Ms.No.338 Finance Department dated 26.08.2010.

For Petitioner : Mr.K.Raja

For Respondents : Mrs.R.L.Karthika,
Government Advocate

COMMON ORDER

These writ petitions have been filed challenging the proceedings of the third respondent dated 07.10.2020 thereby permitted to revise the pay scale.

2. After completion of certain period of services, the petitioners were brought into time scale of pay. All the petitioners were working as Water Supply Assistant, Water Supply Operator, Water Supply Distributor and Maintenance, Street Light Maintenance Helper, Overhead Watertank Operator and Watchman, Motor Operator and Tank Watchman respectively. The first respondent issued Government order in GO.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010 thereby redesignating the Semi-skilled posts as Unskilled. Further, the petitioners were receiving the scale of pay of Rs.2550-3200 without any grade pay.



3. The pre revised scale of pay was revised to Rs.4800-10000 + 1300 GP. As per the Government Order, the said scale was revised to Rs.5200-20200+1900 GP with effect from 01.01.2006 notionally and monetary benefits from 01.08.2010 and accordingly, they were paid arrears. However, the Director of Local Fund Audit raised audit objections. The Commissioner of Municipal Administration by its letter dated 21.05.2015, had cancelled the revision of scale of pay and recovery proceedings was initiated to the employees of the Municipality. The said proceedings is contrary to the Government order in GO.Ms.No.338 dated 26.08.2010. Based on the communication of the Commissioner of Municipal Administration, now the third respondent passed the impugned order dated 07.10.2020 thereby permitted to revise the Grade Pay of Rs.1900/- to Rs.1300/-. As per GO.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010, the petitioners are entitled to get scale of pay of Rs.5200-20200 + 1900 GP. Similar matters were already decided by this Court in a batch of writ petitions in WP.No.1828 of 2020, etc batch dated 22.11.2023 and this Court allowed those writ petitions and directed to restore the original pay scale as fixed vide GO.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010. The relevant paragraphs of the said order are extracted hereunder:



WEB COPY

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*



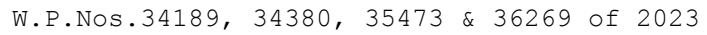
as shown below:--

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 (prerevised) with corresponding revised scale of pay duly re-designating these posts as Unskilled. I*

ii) *Consequent on the above upgradestined and of Rs.3050-4590 (prerevised) recommended to Unskilled and Semi-skilled employee (pre entry level Grade-II 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-II trade posts and also taking into account the "plus two" qualification prescribed for certain trade courses, the Grade I 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--I.*

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*



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



WEB COPY



W.P.Nos.34189, 34380, 35473 & 36269 of 2023

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



WEB COPY

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.

15. In view of the above stated reasons, these Writ Petitions are allowed and the proceedings dated 27.03.2019



W.P.Nos.34189, 34380, 35473 & 36269 of 2023

issued vide Na.Ka.No.14759/2012/A10, dated 18.12.2019 issued vide Na.Ka.No.5503/2018/Pa4 and dated 31.12.2019 issued vide Na.Ka.No.300/2019/A1 by the respondents 1 to 3 respectively are quashed and consequently the respondents 1 to 3 are directed to restore the original pay scale as fixed vide G.O.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010 from the date of their respective eligibility. No costs. Connected miscellaneous petitions are closed.

4. However, the learned Government Advocate appearing for the respondents relied upon the judgment of the Hon'ble Division Bench of Madurai Bench of this Court in writ appeals in WA(MD).Nos.804 to 814 of 2022 dated 07.12.2023, wherein it is held as follows:

9. We have carefully considered the arguments on either side. We are in entire agreement with the learned Additional Advocate General. The writ petitioners are all covered under basic services, namely, services which are governed by Tamil Nadu Town Panchayat Establishment (Qualification and Recruitment of Office Assistants) Rules, 1988, whereas, the trade posts are covered under the Tamil Nadu Town Panchayat Establishment Rules. It is a fortuitous circumstance that the pay that the petitioners were drawing were similar to those who were unskilled, but possessed practical experience. The Director of Town Panchayat had equalized the writ petitioners, who are in basic service, with those in the



WEB COPY

technical service and had granted the relief to the writ petitioners. This factum had come to light when an audit was done and the mistake committed by the Director of Town Panchayat came to light. This has been rectified by the impugned order in the Writ Petitions.

10. The writ petitioners, who are VIII Standard pass and X Standard fail, cannot claim to be equivalent to the persons with I.T.I certificate and persons, who did not have I.T.I certificate, but those who had technical qualification by virtue of their practical experience. The idea of merging skilled and unskilled workers was to finally phase out the unskilled assistants till the present incumbents vacate their posts. This benefit which had been granted for persons who are otherwise not technically qualified, but possessed experience, cannot be granted to the writ petitioners, who are in an entirely different service.

5. As per GO.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010, other trade posts are re-designated as unskilled. Further, trade posts with practical experience i.e. category of unskilled Assistants shall become defunct as and when the existing incumbents vacate the posts. Further, all future requirements of the trading posts for all Government Departments / local bodies shall be made to the post of Skilled Assistant



W.P.Nos.34189, 34380, 35473 & 36269 of 2023

Grade-II (entry level post) from among the ITI certificate holders only by giving due protection to the existing incumbents. Therefore, those who have no practical experience filed writ petitions before the Madurai Bench of this Court challenging the order of revision of scale of pay and recovery. All the writ petitions were dismissed and the same were confirmed by the Hon'ble Division Bench of this Court and observed that the petitioners who are 8th std pass, 10th std fail cannot claim to be equivalent to the persons with ITI certificate and persons, who did not have ITI certificates, but those who had technical qualification by virtue of their practical experience. The said benefit which had been granted for persons who are otherwise not technically qualified but possessed experience, cannot be granted to the petitioners who are in an entirely difference service. Whereas insofar as the petitioners are concerned, they were appointed long before and they had technical qualification by virtue of their practical experience. Therefore, this Court allowed the writ petitions filed by the similarly placed persons like the petitioners in the above mentioned batch of writ petitions on 22.11.2023.

6. Accordingly, all the writ petitions are allowed and the



W.P.Nos.34189, 34380, 35473 & 36269 of 2023

impugned proceedings dated 07.10.2020 insofar as reducing the scale of pay of the petitioners including grade pay is quashed. The respondents are directed to restore the original pay scale as fixed vide GO.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

20.02.2024
(2/2)

lok



W.P.Nos.34189, 34380, 35473 & 36269 of 2023

WEB COPY

- To
1. Secretary,
The Government of Tamilnadu,
Finance Department, Fort St.George,
Chennai 600 009
 2. Secretary,
The Government of Tamilnadu,
Municipal Administration and Water Supply Department,
Fort St.George, Chennai 600 009
 3. The Director,
Town Panchayat Administration,
Raja Annamalaipuram, Chennai 600 028
 4. The Director,
Local Fund Audit,
Integrated Complex for Finance Department,
5th Floor, Saidapet, Animal Husbandry Hospital Campus,
Nandanam, Chennai-35
 5. The Executive Officer,
Ponnamaravathy Selection Grade,
Town Panchayat, Pudukottai District
 6. The Executive Officer,
Ponnamaravathy Selection Grade,
Town Panchayat, Pudukottai District
 7. The Executive Officer,
Ponnamaravathy Selection Grade Town Panchayat,
Pudukottai District
 8. The Executive Officer,
Arimalam Town Panchayat,
Pudukottai District



WEB COPY



W.P.Nos.34189, 34380, 35473 & 36269 of 2023

G.K.ILANTHIRAIYAN, J.

lok

W.P.Nos.34189, 34380, 35473 & 36269 of 2023

20.02.2024
(2/2)