BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.15943 of 2016
and
W.M.P.(MD)Nos.11680 and 11681 of 2016

C.Sethu Sankara Narayanan ... Petitioner

Vs.

1.The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli.

2.The Assistant Commissioner,
Palai Ward Office,
Tirunelveli Corporation,
Tirunelveli. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the 2nd respondent in Na.Ka.No.C1-1-2016 dated 12.07.2016 and to quash the same and consequently direct the respondents to allow the petitioner to continue to draw pay scale in the unskilled post as ordered by the 1st respondent in Na.Ka.No.9969/2011/C3 dated 21.04.2012 and as per order G.O.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010.

For Petitioner : Mr.Sailendra Babu,
For F.Deepak

For Respondents : Mr.Aayiram K. Selvakumar

ORDER

The prayer of the writ petition is as follows:

This writ petition has been filed to call for the records relating to the impugned proceedings issued by the 2nd respondent in Na.Ka.No.C1-1-2016 dated 12.07.2016 and to quash the same and consequently direct the respondents to allow the petitioner to continue to draw pay scale in the unskilled post as ordered by the 1st respondent in Na.Ka.No.9969/2011/C3 dated 21.04.2012 and as per order G.O.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010.

2. **The facts which led to the filing of this writ petition are as follows:**

The petitioner was appointed as an unskilled worker in the water supply section of the respondent corporation. In due course of time, his service came to be regularized from the date of his initial appointment.

While being so, the Government, vide Government order in G.O.Ms.No.234, Finance (PC) Department, dated 01.06.2009, implemented revised pay structure under 4th pay band based on the recommendation of the 6th scale pay commission and revised the scale of pay for various employees notionally with effect from 01.01.2006. Following which, the Government issued orders in G.O.Ms.No.338, Finance (PC) Department, dated 26.08.2010, rationalizing the trade posts with revision in their scale of pay and bringing to change in the nomenclature of the post by which the unskilled and semi skilled employees were employed by merging the said posts together and placing on a higher scale of pay of Rs.3050-4590 with corresponding revised scale of pay duly re-designating the post as trade post. Thereafter, the 1st respondent vide proceedings in Na.Ka.No. 9969/2011/C3 dated 21.04.2012 passed an order by revising the scale of pay of various posts under the respondent corporation including the trade posts with service benefits with effect from 01.01.2006 and monetary benefits with effect from 01.08.2010 under the revised scale of pay. While being so, the impugned proceedings dated 12.07.2016 bearing Na.Ka.No.C1-1-2016, came to be issued by the 2nd respondent in which revision of pay along with recovery came to be issued without putting the petitioner on notice and without providing any opportunity of hearing, more particularly to those who held the posts under the category of unskilled workers. Challenging the same, the present petition came to be filed.

3. The learned counsel for the petitioner Mr.Sylendra Babu submitted that, based on an audit objection raised pursuant to the implementation of the G.O.Ms.No.338, Finance (PC) Department, dated 26.08.2010 with respect to the extension of benefits of refixation of pay to the unskilled posts, the impugned circular has been issued by stating that the fixation of pay in respect of the unskilled posts are erroneous on the basis of which proceedings to recover the pay to the petitioner as per the new pay fixation came to be passed. Such an exercise violates all the principles of natural justice for the sole reason that the petitioner was neither put on notice nor given an opportunity of hearing before passing the aforesaid impugned order and pressed for quashing the impugned proceedings.

4. The learned Standing Counsel Mr.Aayiram K. Selvakumar submitted that, the benefits of G.O.Ms.No.338, Finance (PC) Department, dated 26.08.2010 is applicable only for trade posts and not for the post held by the petitioner who was only an unskilled worker in the water supply section of the respondent corporation. He further pointed out that the said

category of water supply fell under non trade post and hence, the merger of such unskilled non trade post in the category of trade post will never arise. He further submitted that the 2nd respondent at the first instance had mistakenly included those persons who are serving non trade posts in the category of trade post and after it was found that through an audit objection the impugned revised circular came to be issued highlighting the points that a scale of non trade post ought not to have been refixed, as per G.O.Ms.No. 338, Finance (PC) Department dated 26.08.2010. Categorically contending that the said decision has been taken uniformly across the state in various town panchayats, municipalities and corporations considering the huge financial implications which had been a burden to the state exchequer, the learned standing counsel insisted that such a decision pursuant to the audit objection is inevitable and on that basis he pressed for dismissal of the writ petition.

5. Heard the learned counsels on either sides and carefully perused the materials available on record.

6. This Court has already dealt with a similar issue in a batch of writ petitions in W.P.Nos.1828 of 2020 batch dated 22.11.2023 in which similar

orders have been quashed and the relevant portion of the same is extracted as follows:

> *"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.*
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> *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."

7. Fully fortified by the decision of this Court in the judgment extracted supra, I am of the considered view that the benefit of re-fixation of pay has been extended to the petitioner only on the basis of G.O.Ms.No.338, Finance (PC) Department, dated 26.08.2010. Having extended the said benefits under the mandates of a Government order issued by the State under Article 162 of the Constitution of India, later by the impugned circular, the 2nd respondent has come forward to take away the benefits sanctioned in favour of the petitioner and thereby passing an order of recovery without putting him on notice and without giving him an

opportunity of hearing. No doubt, the said exercise is *per se* illegal and it has been issued completely violating the principles of natural justice. Categorically recording that the policy decision which has been taken by the State by issuance of a G.O. under Article 166 of Constitution of India cannot be done away by issuance of an executive instructions of the 2nd respondent, I have no hesitation to quash the impugned order dated 12.07.2016.

8. Accordingly, the impugned order is quashed. With the above observations, this writ petition stands allowed. Consequently, connected miscellaneous petitions are closed.

12.08.2024

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

L.VICTORIA GOWRI, J.

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