IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-03-2025

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

WP No. 5359 of 2018
and W.M.P.No.6582 & 6583 of 2019

1. P.Arumugam,
S/o.Vaiyapuri Gounder, No.12A,
Nedunchezhiyan Street, South North
Lane, Thelungupalayam Post,
Coimbatore 641 039

Petitioner(s)

Vs

1. Government of Tamil Nadu,
Rep by its Secretary, Finance
Department, Fort St. George, Chennai 9

2.The Secretary,
Family, Health and Rural Services
Department, Fort St. George, Chennai 9

3.The Principal Accountant
General (A and E), The Office of the
Accountant General, Teynampet,
Chennai 18

4.The Director of Medical
Education, Office of the Director of
Medical Education, Kilpauk, Chennai

5.The Principal,
ESI Medical College and Hospital,
Coimbatore 641 015

Respondent(s)

PRAYER: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified mandamus calling for the records pertaining to the orders dt 9.1.2016, passed by the Office of the 3rd respondent stating that he is entitled to grade pay as applicable to Other Technical Posts and not as applicable to Skilled Assistant Grade II as per G.O.Ms.No.325, Finance (Pay Cell) Department, dt 22.7.2013 and thereby reducing the petitioner pay and grade pay and sanctioning him pension, DCRG and other terminal benefits, based on such reduced pay and the orders Na. Ka. No.250/Ni2/2/2016 dt 13.4.2017 and ....6.2017 issued by the 5th respondent in Na. Ka. No. 599/Ni2/2016, revising, re-fixing and reducing his pay and ordering for recovery of a sum of Rs.3,29,790/- towards the excess payment alleged to have been paid to him between 01.04.2013 to 31.10.2015 and withholding of his earned leave salary and unearned leave on private affairs amounts for adjustment towards the amounts, quash the same and consequently direct the respondents to restore his pay which fixed as per G.O.Ms.No.325, Finance (Pay Cell) Department dated 22.07.2013 and direct the respondents to sanction and settle all his terminal benefits as per the proposal dated 06.10.2015 sent by the fifth respondent with all consequential monetary and other benefits after adjusting the amounts already paid to him, together with interest at the rate of 12% per annum.

For Petitioner(s): M/s.M.Karunkaran

For Respondent(s): Mr.Tippusulthan
Government Advocate
for RR1, 2, 4 and 5S
M/s.T.S.Selvarani Sc For R3

ORDER

This writ petition has been filed to quash the order of the third respondent dated 9.1.2016 and the orders of the 5th respondent in Na. Ka. No.250/Ni2/2/2016 dt 13.4.2017 and Na. Ka. No. 599/Ni2/2016 dated ....6.2017 and consequently direct the respondents to restore the petitioner's pay which is fixed as per G.O.Ms.No.325, Finance (Pay Cell) Department dated 22.07.2013 and direct the respondents to sanction and settle all his terminal benefits as per the proposal dated 06.10.2015 sent by the fifth respondent with all consequential monetary and other benefits after adjusting the amounts already paid to him, together with interest at the rate of 12% per annum.

2. The petitioner was appointed as a temporary Engine Driver Grade II in the fifth respondent hospital on 25.09.1985. His services have been regularized with effect from 23.05.1985 and he was given with Selection Grade Pay with effect from 23.05.1995. The Government has issued an order in G.O.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010 for re-designating the Engine Driver Grade II post as Skilled Assistant Grade II and fixing the scale of pay and Grade pay for Grade I and Grade II Skilled assistants and for other trade posts.

3. On 08.11.2010 the Government has notified the scale of pay for selection grade, special grade for various posts. As per G.O.Ms.No.63 Finance (Pay Cell) Department dated 26.02.2011, the Grade Pay of Rs.2,400/- was

allowed to the Junior Assistants of various categories including the Lab Assistants. The fifth respondent has issued an order for revising the pay band of Grade II skilled Assistants by fixing it at Rs.5,200/- with grade pay of Rs.2,600/- (the pre-revised scale was Rs.3,200-85-4900). The Government Order in G.O.Ms.No.325 Finance (Pay Cell) Department, dated 22.07.2013 was issued to revise the pay bands and grade pay of technical staffs. The fifth respondent issued an order by revising the pay band of the petitioner at Rs.9,300 – 34,800/- by allowing the Grade Pay at Rs.4,400/- with notional effect from 01.01.2006 and monetary benefit with effect from 01.01.2013.

4. The fifth respondent sent a proposal to the third respondent for sanctioning the terminal benefits. The petitioner has retired from service on his attaining the age of superannuation on 31.10.2015. The fifth respondent sent a proposal on 06.10.2015 itself to the third respondent to sanction the terminal benefits and fix the pension along with the calculation sheet as per the revised pay fixed by his order dated 02.12.2013. Thereafter, the third respondent has issued the impugned order dated 09.01.2016 by reducing the pay of the petitioner on par with the other trade posts by wrongly construing the Government Order in G.O.Ms.No.325 Finance (Pay Cell) Department, dated 22.07.2013 and issued the monthly pension and other terminal benefits on the same basis.

5. The petitioner has sent various representation to consider his representation but that was not accepted by the respondents. On the contrary the fifth respondent has also issued a consequential order by revising the pay of the petitioner on 13.04.2017 and an order for recovery of Rs.3,52,044/- alleging to be the excess payment for the period between 01.04.2013 to 31.10.2015. Hence the petitioner has filed this writ petition to challenge the above orders and to revise the terminal benefits of the petitioner as per the original proposal of the fifth respondent dated 06.10.2015.

6. The issue raised in this writ petition is no more a *res integra*. Similar issue has already been surfaced in a batch of writ petition filed in W.P.No.1828/2020 & batch and this Court has been disposed the same on 22.11.2023 by settling the legal position and they have been allowed on the following observation:

> *“ **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.*

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

7. As the petitioner is also similarly placed as that of the petitioners in the above order, the benefit of the above order should be extended to this petitioner as well.

8. In view of the same the writ petition is allowed and order of the third respondent dated 9.1.2016 and the orders of the 5th respondent in Na. Ka. No.250/Ni2/2/2016 dt 13.4.2017 and Na. Ka. No. 599/Ni2/2016 dated 6.2017

are hereby quashed and the respondents are directed to restore the petitioner's pay which is fixed as per G.O.Ms.No.325, Finance (Pay Cell) Department dated 22.07.2013 and sanction and settle all his terminal benefits as per the proposal dated 06.10.2015 sent by the fifth respondent, with all consequential monetary and other benefits after adjusting the amounts already paid to him, together with interest at the rate of 12% per annum. No costs. Connected miscellaneous petitions are closed.

25-03-2025

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

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R.N.MANJULA J.

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