



W.P.(MD).No.5577 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 09.12.2024

ORDER PRONOUNCED ON : 03.01.2025

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.5577 of 2023
and WMP(MD).Nos.5208 & 5209 of 2023**

A.Radhakrishnan

....Petitioner

Vs

1.The Accountant General
Office of the Accountant General (A&E)
361, Annasalai
Chennai 600 018

2.The Director of Town Panchayat
Office of the Director of Town Panchayat
Nagar Nirvaga Office Building
7th Floor, M.R.C.Nagar
Chennai

3.The District Collector
Karur District
Karur

4.The Executive Officer
Puliyur Town Panchayat
Karur District
Karur

....Respondents



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Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the first respondent vide his proceedings in No.P12/1/11225114/ADK/234 dated 07.09.2022 and consequential impugned order passed by the first respondent vide his proceedings in No.P12/3/11225354/ADK/378 dated 21.12.2022 and quash the same as illegal and consequentially directing the respondents to disburse all monetary benefits to the petitioner on the strength of his last drawn salary viz.,40,900/- along with admissible interest within the time that may be stipulated by this Court.

For Petitioner : Mr.H.Mohammed Imran
For M/s.Ajmal Associates

For Respondents : M/s.S.Mahalakshmi
Standing Counsel for R1

: Mr.A.Baskaran
Additional Government Pleader for R2 to R4

ORDER

The present writ petition has been filed by a retired Bill Collector who was working in the fourth respondent Town Panchayat challenging two orders of the first respondent dated 07.09.2022 and 21.12.2022 wherein it was found that the petitioner is not eligible to receive the benefits under G.O.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2020 and the petitioner is not eligible to receive pension under Tamil Nadu Pension Rules.



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2.A perusal of the averments in the writ affidavit reveals that the petitioner was appointed as OHT Watchman (Water Supply) on 01.06.1992 in the office of the fourth respondent through Employment Exchange in regular time scale of pay. The petitioner was promoted as Bill Collector on 26.02.2021 and he petitioner attained superannuation on 31.05.2022. When the pension proposals were forwarded to the first respondent, he had passed the impugned order on 07.09.2022 holding that the petitioner is not entitled to the benefit of G.O.Ms.NO.338 Finance (Pay Cell) Department dated 26.08.2010 and the petitioner is not eligible to receive pension from the State but only from the local body.

3.It could be seen from the records that under G.O.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010, the Government had directed that the scales of pay of the Technical Categories (Trade posts)in all Government Departments/Local Bodies shall be uniformly revised and re-designated. In Serial No.5, there is a reference about other Trade Posts which will hereinafter be re-designated as unskilled posts. The existing pay scales and trade post were revised. According to the petitioner, he falls under the said category of unskilled employees and therefore, he is entitled to the benefits of the above said Government Order.



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4. On 29.12.2017, an order was passed by the fourth respondent herein wherein the pay scales of the petitioner were refixed and recoveries were ordered alleging that he is not entitled to the benefit of G.O.Ms.No.338 Finance (Pay Cell) Department dated 26.08.2010. The said order was put to challenge by the writ petitioner in WP(MD).No.1042 of 2018. This Court was pleased to set aside the order of re-fixation of pay and recovery and dispose off the writ petition on 27.03.2018. This Court has further held that no amount can be recovered from the writ petitioner as he belongs to the last grade in service. However, the authority was granted liberty to issue a show cause notice and after giving opportunity of hearing to the writ petitioner, it is open to the respondents to refix the scale of pay. Though this order was passed in the year 2018, till retirement of the petitioner on 31.05.2002, the fourth respondent has not issued with any notice for re-fixation of pay scale.

5. The petitioner was receiving the benefit arising out of G.O.Ms.No. 338 Finance (Pay Cell) Department dated 26.08.2010 from 30.08.2011 till the date of superannuation. After the petitioner had attained superannuation, when the pension proposals were forwarded to the first respondent, again the first respondent has taken the same stand that the petitioner is not entitled to the benefit under G.O.Ms.No.338. Therefore, it is clear that while the petitioner was in service, the fourth respondent has not chosen to issue a show cause notice to the writ petitioner relating to re-fixation of pay scale as



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directed by this Court in WP(MD).No.1042 of 2018 dated 27.03.2018.

Therefore, this Court is of the considered opinion that the impugned order of the first respondent dated 07.09.2022 is liable to be set aside not only on the ground of violation of the principles of natural justice, but also on the ground of violation of the order of this Court in WP(MD).No.1042 of 2018.

6.A perusal of the next impugned order dated 21.12.2022 reveals that the first respondent has taken a view that the petitioner is entitled to receive the pension only from the local body and he is not entitled to the benefit under Tamil Nadu Pension Rules on the sole ground that the petitioner has not been enrolled in GPF, but he was continued in P.F account. The petitioner was initially appointed as Overhead Tank Watchman and his services are governed by Tamil Nadu Town Panchayat Establishment (Qualification and Recruitment of Office Assistants) Rules, 1988 wherein the post of Waterman-cum-Watchman, Turn-cock is placed under Class-III. On his promotion as a Bill Collector, his services are governed by Tamil Nadu Town Panchayat Establishment (Qualification and Recruitment of Office Assistants) Rules, 1988. Rule 19 of the above said Rules clearly points out that the conditions of service of a Town Panchayat employees shall be the same as that of the Government servant of similar standing and status. Therefore, the impugned order dated 21.12.2022 declaring the services of the petitioner as services in local body is not legally sustainable.



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7.The failure on the part of the head of the department to close P.F account and to open a G.P.F, will not render the services of the petitioner as ineligible to get the benefits under Tamil Nadu Pension Rules. Therefore, the order impugned in the writ petition dated 21.12.2022 is hereby set aside.

8.In view of the above said facts, this Court passes the following order:

a)The order impugned in the writ petition passed by the first respondent on 07.09.2022 is hereby set aside and the matter is remitting back to the file of the fourth respondent to issue a show cause notice to the writ petitioner with regard to the revision of pay scales as directed by this Court in WP(MD).No.1042 of 2018 dated 27.03.2018. Based upon the explanation submitted by the writ petitioner, the fourth respondent is directed to pass orders. Based upon the said order, a fresh pension proposal shall be forwarded to the first respondent.

b)The impugned order of the first respondent dated 21.12.2022 is hereby set aside and it is declared that the petitioner is governed by Tamil Nadu Pension Rules.

9.In fine, this writ petition is allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

03.01.2025

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



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WEB COPY To

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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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of 2023

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