

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2018

DATE OF DECISION : 04.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.29097 to 29099, 29144, 29248, 29249, 29576, 29589, 29590, 29665,
31342 to 31347, 32342, 32446, 33915, 34027, 34144 of 2017, 72, 128, 129,
130, 339, 448, 659, 660, 661, 669, 770, 1026, 1049, 1178 to 1180, 1300, 1326,
1448, 1498 & 1501 of 2018

W.P.No.29097 of 2017:

- 1 N.Suresh Kumar
- 2 M.Madan
- 3 G.Jeyaprabha
- 4 R.Jeyakumar
- 5 M.Dhanasekaran
- 6 T.Vimala Veni
- 7 R.Saraswathy
- 8 T.Malathi
- 9 S.Vetrivel
- 10 S.Karthikeyan

.. Petitioners

-VS-

- 1 The Government of Tamilnadu
rep. by its Addl. Chief Secretary
Finance (Pay Cell) Department
Fort St. George
Chennai 600 009
- 2 The Engineer in Chief Buildings-1
Chief Engineer (General)
Public Works Department
Chepauk
Chennai 600 005

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent relating to the issue of the impugned G.O. Viz., G.O.Ms.No.328 Finance (Pay Cell) Department dated 31.10.2017 and quash the same and consequently to direct the respondents to fix the petitioners pay in the pay structure in the Tamilnadu Revised Pay Rules 2017 at appropriate level in the pay Matrix therein corresponding to the pay scales as ordered by the Government in G.O.Ms.No.312 Finance (Pay Cell) Department dated 26.8.2010 which the petitioners are drawing pursuant to the judgment of this Hon'ble Court dated 27.2.2014 passed in W.A.No.810 of 2012 and batch cases.

For Petitioners

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Mr.R.Thiagarajan
Senior Counsel
for Mr.N.Subramanian
in WP Nos.29097 to 29099
of 2017
Mr.P.S.Raman
Senior Counsel for
Mr.Swarnam J.Rajagopalan in
WP Nos.29144, 29589 & 29590
of 2017
Mr.AR.L.Sundaresan
Senior Counsel for
Mr.MA.Gouthaman in WP Nos.
29248, 29249/17 & 770/18
Mr.R.Viduthalai
Senior Counsel for
Mr.S.Rajendiran in WP 32342/17
Mr.N.Subramanian in WP Nos.
29665, 31342 to 31347, 32446,
34027/17, 128, 448, 1049 &
1498/18
Mr.R.Prem Narayan in WP Nos.
34144/17, 72, 129, 130 & 339/18
Mr.A.Edwin Prabakar in WP Nos.
659, 660 & 661/18
Mr.Swarnam J.Rajagopalan in
WP 669/18
Mr.U.Karunakaran in WP Nos.
1026 & 1501/18
Mr.M.Muthappan in WP Nos.1178
to 1180/18

WEB C

Mr.P.Raja in WP Nos.1300, 1326,
& 1448/18
Mr.V.T.Balaji in WP No.33915/17
Mr.A.Venkatachalam
Petitioner-in-Person in WP
No.29576/17

For Respondents

::

Mr.Vijay Narayan
Advocate General
assisted by
Mr.V.Jayaprakash Narayanan
Special Government Pleader
Mr.C.Vigneswaran and
Mr.Goutham Venkatesh
Government Advocates
for the State in all the WP's
Mr.R.Arunmozhi
Standing Counsel
for Chennai Corporation in
WP Nos.29665, 34027/17,
128, 448, 1049, 1300, 1326,
1448 & 1498/18

COMMON ORDER

These writ petitions have been filed challenging the impugned Government Order issued by the Additional Chief Secretary to Government in G.O.Ms.No.328, Finance (Pay Cell) Department dated 31.10.2017, to quash the same with a consequential direction to the respondents to fix the petitioners' pay in the pay structure in the Tamilnadu Revised Pay Rules 2017 at appropriate level in the pay matrix therein corresponding to the pay scales as ordered by the Government in the respective earlier Government Orders which they are drawing and/or pursuant to the judgment of this Hon'ble Court dated 27.2.2014

passed in W.A.Nos.504 of 2012 and batch cases.

1.1. All these petitioners are working as Engineers/Officers in the Public Works/Agriculture/Horticulture/Highways/Planning Design & Investigation/Animal Husbandry, Dairying & Fisheries/Industrial Safety & Health/Transport/Motor Vehicle Inspection/Greater Chennai Corporation Department(s) and the writ petitions have been filed by the individual Engineer(s) or the respective Association(s) challenging the impugned Government Order.

2. Mr.R.Thiagarajan, learned senior counsel appearing for the petitioners in W.P.Nos.29097 to 29099 of 2017, assailing the impugned G.O.Ms.No. No.328, Finance (Pay Cell) Department dated 31.10.2017, heavily contended that the said Government Order ought not to have been issued, contrary to the judgment of this Court dated 27.2.2014 passed in W.A.No.810 of 2012 and batch cases, wherein this Court has observed that the implementation of the G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013 insofar as it affects any category of Government servants/pensioners/family pensioners which are not implemented as on today shall not be implemented till final decision is taken. The learned senior counsel further submitted that the petitioners herein were all working as Assistant Engineers in the Public Works Department after being duly appointed by direct recruitment through the Tamil Nadu Public Service

Commission. While so, as per the policy of the State Government to grant pay scales to their employees on par with the Central Pay Scales, after the implementation of the 6th Central Pay Scales, the Additional Chief Secretary to Government, Finance (Pay Cell) Department, the first respondent herein has fixed the pay scales of Assistant Engineers, Assistant Executive Engineers and Executive Engineers of Public Works Department and other engineering departments with reduced pay. Hence, on the basis of various representations, One Man Commission was constituted to examine the pay anomalies. The said One Man Commission also submitted its report to the Government on 31.3.2010, which was accepted by the Government and orders were issued for implementation of the same departmentwise. Such an implementation of the recommendation of the One Man Commission report led to further claims from other department officials and associations viz., the Tamil Nadu Agricultural Officers Association, Tamil Nadu Veterinary Assistant Surgeons Association, Fisheries Department Officers Association etc., demanding equal scales of pay for the posts of Agricultural Officers, Veterinary Assistant Surgeons, etc. In view of this, the Government reviewed the report of the One Man Commission, which was not justifiable and downgraded the scales of pay of about 52 categories in various departments restoring to a level lower than the level pay granted to the Assistant Engineers, Agricultural Officers etc., accordingly, G.O.(Ms) No.71, Finance (Pay Cell) Department dated 26.2.2011 was issued. Challenging the said

Government Order, several writ petitions were filed by the aggrieved persons including the petitioners and this Court granted interim stay. Finally, by orders dated 8.3.2012, 14.3.2012, 15.3.2012 in W.P.Nos.7006 of 2011 etc., while dismissing the writ petitions, the learned Judge issued a direction to the Government to reconstitute the Pay Grievance Redressal Cell (PGRC) to hear the grievance of all the affected persons including the writ petitioners.

3. As against that, appeals in W.A.Nos.504 of 2012 etc., batch were filed and the Hon'ble Division Bench, by its order dated 27.3.2012, has granted interim stay of operation of the G.O.Ms.No.71 dated 26.2.2011 and the order of the learned single Judge except the operative portion of the order in paragraph no.32. Since the Division Bench of this Court has passed an order on 15.10.2012 in W.A.Nos.504 of 2012 etc., confining the benefit of interim stay granted on 27.3.2012 on the operation of G.O.Ms.No.71, Finance (Pay Cell) Department dated 26.2.2011 only to the appellants/petitioners and vacated the interim order in respect of others, based on the recommendation made by the Pay Grievance Redressal Cell, G.O.Ms.No.242, Finance (Pay Cell) Department dated 22.7.2013 was issued revising the scales of pay to certain categories of employees serving in other departments with a specific direction to regulate the pension/family pension of the retired employees as mentioned therein and to waive the excess payments made till the date of issue of order. In the meanwhile, during the

pendency of the writ appeals, several writ petitions were filed by the Engineers working in various departments of the State including the petitioners' Association in W.P.Nos.21525, 26420 of 2013 etc., challenging the G.O.Ms.No.242 dated 22.7.2013. Finally, the Hon'ble Division Bench, taking up together all the writ appeals and the writ petitions, by a common judgment dated 27.2.2014, holding that the G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013 are vitiated due to violation of the principles of natural justice, directed the State Government to constitute a Pay Grievance Redressal Committee headed by a retired Chief Justice of the Chattishgarh High Court to look into the pay anomalies.

4. When the Hon'ble Division Bench has specifically held that the G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013 insofar as it affects any category of Government servants/pensioners/family pensioners which are not implemented as on today shall not be implemented till fresh decision is taken, it is patently clear that the incumbents of any of the 52 categories covered in G.O.Ms.No.242 dated 22.7.2013 to which the said two Government Orders had not been implemented on the date of the judgment, irrespective of the date of their appointment whether before or after the judgment, rightly appreciating the mandate of the judgment, the Principal Secretary to Government, Finance (PC) Department, in his letter dated 27.3.2014, has made it clear to all the Heads

of Department that there shall not be any reduction in the pay of the employees and pension of the pensioners/family pensioners pursuant to the orders issued in G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013 till further orders from the Government. Further, the Principal Secretary to Government, Finance (PC) Department, by another letter dated 28.5.2014, clarified that all those employees who were promoted after the issuance of G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013 shall also be entitled to the higher scales of pay as per the One Man Commission recommendations, until further orders from Government. Hence, Mr.R.Thiagarajan, learned senior counsel submitted that in view of the aforesaid letters dated 27.3.2014 & 28.5.2014, the Assistant Engineers appointed by redesignation, the Assistant Executive Engineers appointed from Junior Engineers by recruitment by transfer, the Assistant Executive Engineers appointed from Assistant Engineers by promotion and the Executive Engineers appointed from Assistant Executive Engineers by promotion after 22.7.2013, were granted with higher scales of pay as recommended by the One Man Commission. Moreover, the Junior Electrical Inspectors, the Agricultural Officers, Horticulture Officers etc., whose cadre are equivalent to Assistant Engineers of Public Works Department, were also granted the scales of pay as recommended by the One Man Commission without implementing the G.O.Ms.No.242 dated 22.7.2013 as ordered by this Court. Clarifying here Mr.R.Thiagarajan, learned senior counsel contended that when

the respondents, aggrieved by the judgment dated 27.2.2014 for non-implementation of the G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013, filed Special Leave Petition before the Supreme Court, the petitioners' Association also filed Special Leave Petition against the constitution of the Committee, since all the Assistant Engineers, Assistant Executive Engineers and Executive Engineers of Public Works Department and other engineering departments are getting the pay scales as per the recommendations of the One Man Commission without reduction of pay as ordered in G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013. Now the Apex Court has refused to grant stay of the entire portion of the judgment of the Division Bench dated 27.2.2014, except to the extent the fresh Pay Grievance Redressal Committee directed to be set up, in its order dated 16.1.2015 in SLP (C) Nos.12355 of 2014 etc.

5. When the matter stands as above, during the pendency of the Special Leave Petitions, the first respondent ought not to have issued the impugned G.O.Ms.No.328, Finance (Pay Cell) Department dated 31.10.2017 directing the employees to give an option either to revise their pay in the revised pay structure or to continue to draw the pay which is drawn by them based on the interim orders of the Court whichever is financially advantageous to them and the option so exercised would be subject to the outcome of the final verdict of

the Courts. Canvassing how a patent anomaly would occur if the impugned G.O.Ms.No.328 dated 31.10.2017 is accepted, Mr.R.Thiagarajan further explained that if one lower level officer is drawing a pay of Rs.62,450/- in the pay band of Rs.9300-34800+5100 and the other higher level officer is drawing a pay of Rs.62,600/- in the pay band of Rs.15600-39100+5400, then the first employee, the lower level officer will get his pay fixed in the 2017 Pay Rules as Rs.64,300/- in the pay matrix (Table 20 under Schedule III Level 19) corresponding to the pay band of Rs.9300-34800+5100, whereas the other higher level officer will get his pay fixed in the 2017 Pay Rules only as Rs.63,100/- in the pay matrix (Table 22 under Schedule III Level 5) corresponding to pay band of Rs.15600-39100+5400, as a result the higher level officer who is drawing more pay in a higher pay scale than that of his lower level officer prior to 1.1.2016 would be forced to get lesser pay than the said lower level officer who is drawing lesser pay in the lower pay scale. Again reiterating his arguments, the learned senior counsel submitted that if the impugned order is implemented, the Assistant Engineers, the Assistant Executive Engineers and the Executive Engineers would be forced to draw a lesser pay than the feeder categories, which is not permissible in law. Concluding his arguments, the learned senior counsel submitted that when the impugned Government Order has been issued by the first respondent contrary to the judgment of the Division Bench of this Court dated 27.2.2014 in W.A.Nos.504 of 2012 etc., batch, the same is liable to be

quashed.

6. Mr.P.S.Raman, learned senior counsel appearing for the petitioners in W.P.Nos.29144, 29589 & 29590 of 2017, assailing the impugned Government Order, vehemently contended that the Government cannot fix the pay scales on the basis of G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013 when they are no longer in force, in view of the judgment of the Division Bench of this Court dated 27.2.2014 in W.A.Nos.504 of 2012 etc., batch. Again finding fault with the approach adopted by the first respondent in passing the impugned order, submitted that the Government Order passed against the persons who were not parties to the judgment dated 27.2.2014 would also amount to contempt of Court. Moreover, so long as the mandamus issued by this Court in W.A.Nos.504 of 2012 etc., directing the respondents not to implement the G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013 has not been till modified by the Supreme Court while admitting the Special Leave Petitions, as per the law laid down by the Constitution Bench of the Apex Court in **Madan Mohan Pathak v. Union of India and others, AIR 1978 SC 803**, the same should be implemented without being violated. On the contrary, without implementing or complying with the same, issuing G.O.Ms.No.328 dated 31.10.2017 indirectly enforcing G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013 would amount to the violation of the direction,

which is neither permissible in law nor acceptable by this Court. Concluding his arguments, Mr.P.S.Raman submitted that the counter affidavit filed by the respondents justifying the non-implementation of the judgment passed by the Division Bench, in spite of refusal of stay of the judgment by the Supreme Court, citing financial implications, the respondents cannot refuse to pay the salary as per the recommendations of the One Man Commission. Even if they succeed before the Supreme Court, recovery can be made from the petitioners since most of them are serving officers and even if some of them retire from service, taking an undertaking from them for recovery subject to the result of the Special Leave Petition pending before the Apex Court, recovery can be made from the retiring officers.

7. Mr.AR.L.Sundaresan, learned senior counsel for the petitioners in W.P.Nos.29248, 29249 of 2017 & 770 of 2018, challenging the impugned order, forcibly argued that after the judgment passed by the Division Bench directing that the G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013 shall not be implemented till fresh decision is taken by the Pay Grievance Redressal Committee, the issuance of the impugned order deciding to implement the recommendation of the Official Committee 2017 with a further direction to the employees to exercise their option to revise their pay in the manner prescribed or to continue to draw the pay being drawn by them presently based

on the interim order of the Court, is nothing but arm-twisting the petitioners to accept the G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013, which is, on the face of it, amounting to disobedience of the order warranting contempt action against them. Therefore, the impugned order is liable to be quashed, he pleaded.

8. Mr.R.Viduthalai, learned senior counsel for the petitioners in W.P.No.32342 of 2017 submitted that when the two attempts made by the respondents to reduce the pay scales of the petitioners by passing successive G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013 have been thwarted by the Division Bench in its judgment dated 27.2.2014 in W.A.Nos.504 of 2012 etc., batch directing them not to implement the aforementioned two orders, during the pendency of the Special Leave Petitions, the first respondent cannot pass the impugned order, which is a clear case of disobedience of the judicial order dated 27.2.2014. Again explaining the hardship going to be faced by the Horticultural Officers, Assistant Directors of Horticulture, Deputy Directors of Horticulture and Joint Directors of Horticulture, Mr.R.Viduthalai submitted that when the scales of pay of the Horticultural Officers, Assistant Directors of Horticulture, Deputy Directors of Horticulture and Joint Directors of Horticulture were enhanced in G.O.Ms.No.448, Finance (Pay Cell) Department dated 31.12.2010 in the pay bands of Rs.15600-39100+GP 5400; Rs.15600-39100+GP

6600; Rs.15600-39100+GP 7600 and Rs.37400-67000+GP 8700 respectively, the impugned revision on the basis of the report of the Official Committee 2017 based on G.O.Ms.No.71 dated 26.2.2011 by fixing the scales of pay for the aforementioned posts at Rs.15600-39100+GP 5100; Rs.15600-39100+GP 5400; Rs.15600-39100+GP 6600 & Rs.15600-39100+GP 7600 respectively to annul the judgment of the Division Bench, is wholly bad in law, which no rule of law can tolerate.

9. Mr.N.Subramanian, learned counsel for the petitioners in W.P.Nos.29665, 31342 to 31347, 32446, 34027 of 2017 & 128, 448, 1049 & 1498 of 2018, Mr.R.Prem Narayan, learned counsel for the petitioners in W.P.Nos.34144 of 2017 & 72, 129, 130 and 339 of 2018, Mr.A.Edwin Prabakar, learned counsel for the petitioners in W.P.Nos.659 to 661 of 2018, Mr.Swarnam J.Rajagopalan, learned counsel for the petitioner in W.P.No.669 of 2018, Mr.U.Karunakaran, learned counsel for the petitioners in W.P.Nos.1026 and 1501 of 2018, Mr.M.Muthappan, learned counsel for the petitioners in W.P.Nos.1178 to 1180 of 2018, Mr.P.Raja, learned counsel for the petitioners in W.P.Nos.1300, 1326 & 1448 of 2018, Mr.V.T.Balaji, learned counsel for the petitioner in W.P.No.33915 of 2017 and Mr.A.Venkatachalam, Petitioner-in-erson in W.P.No.29576 of 2017, also adopted the arguments of the learned senior counsels.

10. Detailed counter affidavits have been filed by the respondents. Mr. Vijay Narayan, learned Advocate General for the State, replying to the above contentions, argued that the issue of fixation of pay scales is complex in nature and also the prerogative of the State Government, which has to be carried out by the executive body with due diligence, as even a small change at one level affects the horizontal and vertical pay parity maintained over the years and this has been clearly pointed out by the Apex Court in the case of Chandra and others v. State of Jharkand and others, (2007) 8 SC 279, wherein the Apex Court inter alia observed that the function of pay fixation is an executive function. While so, under the guise of judicial review, the Courts cannot encroach into the territory exclusively meant for the other wing of the Government. Hence, the writ petitions being devoid of merits are liable to be dismissed. Adding further, the learned Advocate General submitted that the State Government is always at liberty to revise the pay scales of the employees whenever the issue is brought to its notice. He argued further that when the One Man Commission submitted its report placing the Assistant Engineers on par with Grade-I post, which has led to revision of pay scales for the first level and second level promotional posts of Assistant Executive Engineer and Executive Engineer from Rs.15600-39100+GP 5400 and Rs.15600-39100+GP 6600 to Rs.15600-39100+GP 6600 and Rs.15600-39100+GP 7600 respectively, it was found that the recommendation of the One Man Commission was not based on sound reasoning. Therefore, the

Government reviewed the recommendation of the One Man Commission and restored the scales of pay of the Assistant Executive Engineers and Executive Engineers to their original level. However, the Assistant Engineers were granted a new scale of pay one level below the Grade-I post at Rs.15600-39100+GP 5100 reducing the grade pay of Rs.300 and placing the post in the same pay band. Again the comparison with Engineering Services and Military Engineering Services is not appropriate considering the fact that these posts are directly recruited and trained for initial posting as Sub Divisional Officers, whereas in the State Government, the initial posting is only as a Section Level Officer and only the next promotional post is the Sub Divisional Officer. Hence the appropriate comparison is with the Central Public Works Department, where the post of Assistant Engineer is placed in the scale of pay of Rs.9300-34800+GP 4600 only. Similarly, the comparison made by the One Man Commission with the Assistant Surgeon is also not appropriate, as there is no equivalence of Diploma holder in the medical line. Hence the recommendation of the One Man Commission to place the Assistant Engineers in Pay Band III opened up a huge differential with Junior Engineers. Hence, it was pleaded that it is appropriate that the scale of pay of Assistant Engineers in the State may be brought down to Pay Band II at Rs.9300-34800, however, the Grade Pay of Rs.5100 already fixed in G.O.Ms.No.71 dated 26.2.2011 which is at a level above their counterparts in the Government of India would be appropriate and the Committee also

recommended that the excess payments made till the issue of revised orders could be waived and need not be recovered.

11. Similarly, dealing with the scales of pay of Joint Directors of Animal Husbandry, Agriculture and Fisheries, it was pleaded that consequent to the downgradation of the scales of pay of the Joint Directors of Animal Husbandry, Agriculture and Fisheries to Pay Band III at Rs.15600-39100+GP 7600, the request of the District Revenue Officers, Deputy Secretaries to Government, Superintendent of Police, Joint Registrars and Joint Commissioners and Joint Directors of other departments to place them on Pay Band IV at Rs.37400-67000+GP 8700 was found not reasonable. In view of all these, after careful consideration, the Government decided to implement the recommendation of the Pay Grievance Redressal Cell, considering the level of Assistant Engineers in Central Public Works Department and the consequential changes made therein in G.O.Ms.No.71 dated 26.2.2011. Although G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013 have been directed not to be implemented till fresh decision is taken by the Pay Grievance Redressal Committee and the direction to the Government to constitute the Pay Grievance Redressal Committee has been stayed by the Apex Court, the Official Committee 2017 has recommended that considering the pendency of Court cases in Supreme Court as well as High Court the pay scale of such of the category of employees drawing

higher pay scale by virtue of Court orders shall be made applicable in the revised pay structure based on the pay as revised and ordered on the recommendations of Pay Grievance Redressal Cell 2012 and such employees can give an option either to revise their pay in the revised pay structure or to continue to draw the pay which is drawn by them based on the interim orders of the Court whichever is financially advantageous to them and it is also made clear that whatever be the option exercised, the same would be subject to the outcome of the final verdict of the Hon'ble Court. In these circumstances, the learned Advocate General pleaded that the writ petitions are not legally maintainable, hence, they should be dismissed.

12. Heard the learned counsel for the parties.

13. When the State Government constituted the Official Committee to examine and make necessary recommendations for revision of scale of pay and allowances of State Government employees, teachers including local body employees pursuant to VI Pay Commission, the said Committee, after considering various aspects, recommended the revision on pay scale to pay scale basis. The said recommendations were also accepted and implemented in G.O.Ms.No.234, Finance (Pay Cell) Department dated 1.6.2009 giving notional effect from 1.1.2006 and monetary effect from 1.1.2007 and separate

Government Orders were also issued in respect of each department. Again on the basis of various representations made by various associations including the petitioners association, One Man Commission was constituted to examine the pay anomalies, if any, and the said One Man Commission also finally submitted its report to the Government on 31.3.2010. Accepting the same, the Government issued orders in G.O.Ms.Nos.254 to 340, Finance (Pay Cell) Department dated 26.8.2010. The said One Man Commission has also recommended the pay of Assistant Engineers who worked at the section level, on par with Group-I officers and Sub Divisional officers. Again in February 2011, representations were received from various departments to extend the higher scale of pay as granted to the Assistant Engineers, Agricultural Officers, etc. The major upward revision recommended by the One Man Commission resulted in the demand for enhanced grade pay by other department officers like Agricultural Officers, Veterinary Assistant Surgeons, Inspector of Fisheries and other equivalent cadres in different departments who were enjoying pay parity with Assistant Engineers earlier on the basis that they are also professionally qualified and to be treated on par with the engineering graduates. When the pay anomalies were rectified on the recommendations of the One Man Commission, all of a sudden, when the officials of the Revenue Department, namely, Tahsildar, Revenue Divisional Officer and officials of the Panchayat Development department opposed the grant of higher pay scale to the engineers, G.O.Ms.No.71, Finance (Pay Cell)

Department dated 26.2.2011 was issued re-fixing the scales of pay of the Assistant Engineers, Assistant Executive Engineers and Executive Engineers without issuing notice to them or their association. Hence, Writ Petition Nos.7006 of 2011 etc., were filed challenging the G.O.Ms.No.71 dated 26.2.2011 and this Court granted interim order of stay of the said Government Order. Due to the interim stay granted by this Court, the Pay Grievance Redressal Cell could not function and the officers posted to the cell had also retired. Finally this Court, by order dated 8.3.2012, while dismissing the writ petitions, directed the Government to constitute the Pay Grievance Redressal Cell to hear the grievance of all the affected persons including the writ petitioners.

14. Aggrieved by the same, W.A.Nos.504 of 2012 etc., and writ petitions were filed and this Court, by order dated 27.3.2012, granted interim stay of operation of the order of the learned single Judge, except paragraph-32 of the operative portion of the order i.e., the constitution of the Pay Grievance Redressal Cell. As per the said order, the Government issued G.O.Ms.No.123, Finance (Pay Cell) Department dated 10.4.2012 re-constituting the Pay Grievance Redressal Cell under the Chairmanship of Mr.S.Krishnan, IAS to consider all the representations so far received and also further representations from the employees associations/heads of departments/individual employees including the aggrieved petitioners in the writ petitions filed challenging the G.O.Ms.No.71

dated 26.2.2011 and to make recommendations to the Government. Since the Division Bench of this Court had passed an order on 15.10.2012 in W.A.Nos.504 of 2012 etc., confining the benefit of interim stay granted on 27.3.2012 on the operation of G.O.Ms.No.71, Finance (Pay Cell) Department dated 26.2.2011 only to the appellants/petitioners and vacated the interim order in respect of others, based on the recommendation made by the Pay Grievance Redressal Cell, G.O.Ms.No.242, Finance (Pay Cell) Department dated 22.7.2013 was issued revising the scales of pay to certain categories of employees serving in other departments with a specific direction to regulate the pension/family pension of the retired employees as mentioned therein and to waive the excess payments made till the date of issue of order. In this context, it is pertinent to extract paragraphs 4 to 6 of the G.O.Ms.No.242 dated 22.7.2013 as follows:-

“(4) Further the Hon'ble High Court in its judgment Order dated 15-10-2012 (reference thirty read above) has passed the following orders:-

“After hearing the Counsel appearing for the respective parties, the Interim Stay granted on 27-3-2012 on the operation of G.O.Ms.No.71, Finance (Pay Cell) Department dated 26-2-2011 is confined with regard to the appellants only and in respect of others the interim stay shall stand vacated.”

As such, the orders issued in para-2 above revising the

scales of pay as recommended by Pay Grievance Redressal Cell is applicable to all categories of employees mentioned therein excluding the Appellants in the Writ Appeals/Petitioners in Writ Petitions who have obtained "Interim Stay" orders and pending in the Hon'ble High Court. However, the applicability of the above revised scales of pay to Appellants/Writ Petitioners is subject to the outcome of the final verdict in the connected Writ Appeals/Writ Petitions pending as on date.

(5) Accordingly, all Head of Departments are directed to implement the above revised scales of pay to the employees in the categories mentioned in para-2 above and re-fix their pay appropriately in the admissible revised scales of pay and issue necessary revised pay fixation orders immediately.

(6) Consequent on the revision of pay scales ordered in para-2 above to the serving employees in the categories mentioned therein, the Pension Pay Officer/Treasury Officers/Sub-Treasury Officers concerned are directed to regulate the pension/family pension of the retired employees in the categories mentioned above with reference to the appropriate pay scales to those who have been granted revision of pension/family pension with reference to para-2 (vi) of G.O.Ms.No.235, Finance (PC) Department dated 1-6-2009. However, the excess payments made till the date of issue of order shall be waived."

15. A perusal of the above clearly shows that the revision of scales of pay recommended by the Pay Grievance Redressal Cell was not made applicable to the parties to the writ appeals. At the same time, it was made applicable to all categories of employees, excluding the appellants in the writ appeals and the petitioners in the writ petitions who had obtained interim stay orders and pending in the Court. Since the G.O.Ms.No.242 dated 22.7.2013 has made two classes of employees among the Government servants, one group who approached the Court to get the higher pay scale without reference to G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013 and another group who had not approached the Court along with the petitioners are denied the benefit of higher scale of pay. Now the following table shows the scales of pay applicable to the Assistant Engineer, Assistant Executive Engineer and Executive Engineer working in the Public Works Department, as per the recommendations of the One Man Commission, reduction ordered in G.O.Ms.No.71 and in G.O.Ms.No.242:-

1	2	3	4	5
Category	Pay scale as per Official Committee (6 th Central Pay) Rs.	Enhanced Pay scale as per One Man Commission Rs.	Pay scale after the reduction ordered in G.O.71 Rs.	Pay scale after reduction ordered in G.O.242 Rs.
AE	9300-34800+ GP4700	15600-39100+ GP5400	15600-39100+ GP5100	9300-34800+ GP5100
AEE	15600-39100+	15600-39100+	15600-39100+	15600-39100+

1	2	3	4	5
	GP5400	GP6600	GP5400	GP5400
EE	15600-39100+ GP6600	15600-39100+ GP7600	15600-39100+ GP6600	15600-39100+ GP6600

16. Similarly, among the categories of Agricultural Officer/Horticultural Officer, Assistant Director of Agriculture/Assistant Director of Horticulture, Deputy Director of Agriculture/Deputy Director of Horticulture and Joint Director of Agriculture/Joint Director of Horticulture, the following table illustrates the position as to the scales of pay applicable to them:

1	2	3	4	5
Category	Pay scale prior to 1.1.2006 Rs.	Enhanced Pay scale as per G.O.448 Rs.	Pay per Reduced Pay scale as per G.O.71 Rs.	Reduced/re-revised Pay scale as per G.O.242 Rs.
AO/HO	6500-11100	15600-39100+ GP5400	15600-39100+ GP5100	9300-34800+ GP5100
ADA/ADH	8000-14050	15600-39100+ GP6600	15600-39100+ GP5400	15600-39100+ GP5400
DDA/DDH	10000-15200	15600-39100+ GP7600	15600-39100+ GP6600	15600-39100+ GP6600
JDA/JDH	12000-16500	37400-67000+ GP8700	15600-39100+ GP7600	15600-39100+ GP7600

17. In view of the order dated 15.10.2012 passed by the Hon'ble Division Bench that has led to the passing of the G.O.Ms.No.242 dated 22.7.2013, the persons who approached this Court were allowed to enjoy the enhanced pay scale mentioned in column-3 above, as per the One Man Commission

recommendations. Sadly the persons who did not come to this Court were allowed to receive the reduced scale of pay mentioned in column-5 above, as a result the G.O.Ms.No.242 has created two classes of Assistant Engineers, two classes of Assistant Executive Engineers, two classes of Executive Engineers, two classes of Agricultural Officers, two classes of Horticultural Officers, two classes of Assistant Directors of Agriculture, two classes of Assistant Directors of Horticulture, two classes of Deputy Directors of Agriculture, two classes of Deputy Directors of Horticulture, two classes of Joint Directors of Agriculture, two classes of Joint Directors of Horticulture, etc., which is not permissible in law. This has been settled by the Apex Court holding that whether the persons have come to the Court or not, there cannot be any differential treatment.

18. Article 14 of the Constitution of India states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 14 forbids class legislation, but permits reasonable classification, provided it is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others that are left out of the group and the idea has rational nexus to the object sought to be achieved by the legislation in question. In order to pass the test of permissible classification, two conditions must be satisfied, namely, (i) that the classification must be founded on intelligible differentia which distinguishes

persons or things that are grouped together from others that are out of the group and (ii) that the idea must have a rational basis from the objective sought to be achieved by the statute in question.

19. In the cases on hand, as mentioned above, among the Assistant Engineers, Assistant Executive Engineers, Executive Engineers, Agricultural Officers, Horticultural Officers, etc., simply for the reason that some persons or one category of employees approached this Court challenging the G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013 and some failed to come, the State cannot create two distinct classes, as the same is unfair, unjust and illegal.

20. Secondly, the Division Bench in its judgment dated 27.2.2014 directed the respondents not to implement the G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013 insofar as it affects any category of Government servants/pensioners/family pensioners, which are not implemented as on today shall not be implemented till fresh decision is taken and in the Special Leave Petitions filed by both the petitioners and the respondents, the Apex Court has not granted stay of the operation of the judgment in paragraph-51(v). Therefore, the law laid down by a Constitution Bench of the Apex Court in **Madan Mohan Pathak v. Union of India & others, AIR 1978 SC 803**

would squarely apply to the cases on hand, wherein it is held that the writ of mandamus once issued by the High Court under Article 226 is bound to be obeyed, for, so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed and that the rights became crystallised in the judgment sought to be enforced. The relevant portions of the judgment of the Apex Court read thus:-

“..But the writ of mandamus issued by the Calcutta High Court directing the Life Insurance Corporation to pay the amount of bonus for the year 1st April, 1975 to 31st March, 1976 remained untouched by the impugned Act. So far as the right of Class III and Class IV employees to annual cash bonus for the year 1st April, 1975 to 31st March, 1976 was concerned, it became crystallised in the judgment and thereafter they became entitled to enforce the writ of Mandamus granted by the judgment and not any right to annual cash bonus under the settlement. This right under the judgment was not sought to be taken away by the impugned Act. The judgment continued to subsist and the Life Insurance Corporation was bound to pay annual cash bonus to Class III and Class IV employees for the year 1st April, 1975 to 31st March, 1976 in obedience to the writ of Mandamus.

It is necessary to remember that we are dealing here with a case where a constitutionally guaranteed

right is sought to be enforced and the protection of such right should not be allowed to be defeated or rendered illusory by legislative stratagems. The courts should be ready to rip open such stratagems and devices and find out whether in effect and substance the legislation trenches upon any fundamental rights. The encroachments on fundamental rights are often subtle and sophisticated and they are disguised in language which apparently seems to steer clear of the constitutional inhibitions. The need for a perspective and alert Bar is, therefore, very great and the courts too have to adopt a bold and dynamic approach, if the fundamental rights are to be protected against dilution or erosion...”

21. Thirdly, what could not be achieved by the respondents through G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013 cannot be allowed to be achieved by the impugned G.O.Ms.No.328 dated 31.10.2017 asking the petitioners to exercise their option either to revise their pay in the revised pay structure or to continue to draw the pay which is drawn by them based on the interim orders of the Court whichever is financially advantageous to them and such option would be subject to the outcome of the final verdict in the Court cases pending in both the Supreme Court and High Court. The impugned order, having been issued after the judgment of the Division Bench dated 27.2.2014 in W.A.Nos.504 of 2012 etc., batch, is wholly unsustainable in law, for

the reason that when all the petitioners have succeeded before the Division Bench in W.A.Nos.504 of 2012 etc., batch and obtained an order with a specific direction that the G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013 insofar as it affects any category of Government servants/pensioners/family pensioners, which are not implemented as on today shall not be implemented till fresh decision is taken by the Pay Grievance Redressal Committee. In this context, the judgment of the Privy Council in **Nazir Ahmed v. King Emperor, AIR 1936 PC 253(2)** following the Chancellor decision in **Taylor v. Taylor, 1875 (1) Ch.D.426**, can be usefully referred to, wherein it has been held that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. In the light of the above, since the Division Bench, as discussed above, taking the effect of G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013 on the petitioners/pensioners/family pensioners, had issued a mandamus not restricting to the appellants/petitioners before it, but passed a judgment to cover up all the persons coming under the categories covered in both the G.O.Ms.No.71 dated 26.2.2011 and G.O.Ms.No.242 dated 22.7.2013 and to pay the enhanced scales of pay till final decision is taken, it is vividly clear that the benefit was extended to all the 52 categories of incumbents covered in the said Government Orders on the date of judgment, irrespective of their date of appointment, whether before or after the judgment, and the mandamus issued not to implement the said

Government Orders is bound to be obeyed and cannot be disregarded.

22. Therefore, for all the aforementioned reasons, the impugned order is quashed and the writ petitions are allowed. Needless to mention that if the respondents succeed before the Supreme Court, they are entitled to recover the amount from the salary of the existing employees or from the pension of the retired employees, as the case may be. Consequently, the connected miscellaneous petitions are closed. There shall be no order as to costs.

Speaking/Non speaking order

04.06.2018

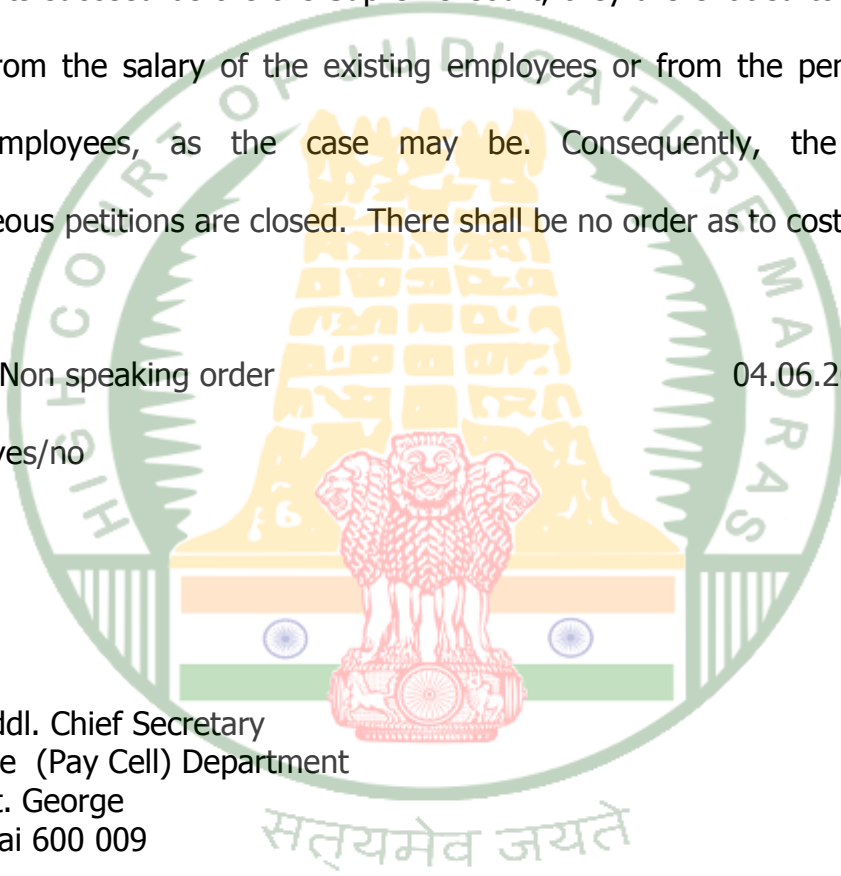
Index : yes/no

SS

To

1 The Addl. Chief Secretary
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Chennai 600 009

2 The Engineer in Chief Buildings-1
Chief Engineer (General)
Public Works Department
Chepauk
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T.RAJA, J.

SS



Order in

W.P.Nos.29097 to 29099 of 2017 etc.

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04.06.2018