

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.Nos.34591, 34593 & 34598 of 2018 &
W.M.P.Nos.40114, 40117, 40118,
40122 & 40124 of 2018

W.P.No.34591 of 2018:

The Superintending Engineer,
Chennai Electricity Distribution
Tamil Nadu Generation and Distribution
Corporation Limited (Formerly known as
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai-600 002. .. Petitioner

versus

Tamil Nadu Minikazha Thozhilalar
Munnetra Sangam,
rep. by its Secretary,
No.800, Anna Salai,
Minvariya Valagam,
Chennai-600 002. .. Respondent

PRAYER: Writ petition filed under Article 226 of the
Constitution of India praying for issuance of Writ of
Certiorari, to call for the records pertaining to I.D.No.80 of
2006 on the file of II Addl.Labour Court, Chennai and quash the
Award dated 16.07.2012 passed therein.

W.P.Nos.34593 & 34598 of 2018:
The Superintending Engineer,
Chennai Electricity Distribution Circle (North)
Tamil Nadu Generation and Distribution Corporation
791, Anna Salai, Chennai-600 002. .. Petitioner in
both WPs

versus

1. K.Pandiyan
2. M.Michael Raj
3. N.Sundarajan
4. G.Kannabiran
5. G.E.Thiagarajan
6. M.Gnanasekaran .. Respondents in WP 34593/2018

7. R.Balaji
8. John Peter Joseph
9. D.Nedunchezian
10.D.Krishnamurthy
11.A.Rajendran
12.C.Desales Jobai

.. Respondents in
WP 34598/2018

Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records pertaining to C.P.Nos.357 & 358 of 2013 on the file of II Addl.Labour Court, Chennai and quash the order dated 18.10.2016 passed therein.

For Petitioner : Mr.Anand Gopalan for
in all WPs M/s.T.S.Gopalan & Co

For Respondent : Mr. Balan Haridoss
in all WPs

COMMON ORDER

Since the issues and the grounds raised in all the Writ Petitions are common, they are taken up together for common disposal. It would be appropriate to first deal with the Writ Petition in W.P.No.34591 of 2019 as the outcome of the same will have direct bearing on the other two Writ Petitions.

2. For the sake of convenience, the parties are hereinafter described as arrayed in W.P.No.34591 of 2019.

The petitioner is the Tamil Nadu Generation and Distribution Corporation Limited, formerly known as Tamil Nadu Electricity Board (hereinafter referred to 'the Board'). The respondent is an association, namely Tamil Nadu Minikazha Thozhilalor Munnetra Sangam, representing a group of workmen employed by the petitioner Management. According to the respondent Sangam, the Board has revised wages on 18.7.1998 with retrospective effect from 1.12.1996 with category of workmen whose interest, the respondent Sangam was espousing. The employees were given option for choosing the date of effecting the pay revision. The employees have given their option for fixing the revised pay scale and based on their option, the scales came to be revised. According to the petitioner, the employees concerned in the dispute, had originally given their option to have their pay revised from 1.12.1996 in pursuant to the revision of pay scales granted on 18.7.1998. While so, the petitioner Board has issued instructions on 1.4.1999 by which, the workmen were given one more option to exercise in regard to the date in which their pay scale need to be revised. According to the Board instructions,

the option has to be exercised on or before 31.5.1999. The second option which was provided under the Memorandum/Instructions dated 1.4.1999, according to the workmen concerned and the respondent Sangam, as not circulated nor were displayed in the Notice Board and therefore, they were not aware of the said Circular at all providing second option.

3. When matters stood thus, some of the juniors appeared to have exercised second option in pursuant to the Memorandum/Instructions, dated 01.4.1999 and by which option, they started drawing more pay than their seniors. Therefore, representations were made by the senior workmen and since there was no response from the Board, an industrial dispute was raised in I.D.No.80 of 2006. The terms of reference are extracted as under:

"Whether the demand of the 20 workmen as mentioned in the list to accept their revised option, as the option already exercised to fix the revised scale of pay as per wage agreement dated 18.7.1998 is not favourable to them since these workmen are getting to them since these workmen are getting lesser pay than their juniors is justified?"

4. According to the aggrieved workmen, they are entitled to be placed in the basic pay of Rs.4570/- with effect from 01.10.1997 in the pay scale of Rs.3370-100-5770 being the basic pay on which their juniors were permitted to place.

5. On behalf of the Management, a counter affidavit has been filed resisting the claim of the workmen that the workmen concerned did not exercise their option within the time stipulated by Memorandum/Instructions dated 01.04.1999 and in view of non-exercise of option on or before 30.05.1999, their request for second option to be exercised was not accepted. In the proceedings before the Labour Court, one witness was examined on behalf of the workmen and six documents were marked as Exs.W1 to W6. On behalf of the Management, one witness was examined and four documents were marked as Exs.M1 to M4. The bone of contention as between the Management and the workmen was that the workmen concerned did not give their option before the stipulated time. The workmen point of consideration was the question of exercising option before the stipulated time did not arise at all since the Memorandum/Instructions was not circulated widely for all the workmen to be aware of such Memorandum nor it was displayed in the Notice Board for the respondent Sangam to take note of it. In any event, their contention was that once the juniors had been given opportunity to exercise their option and on the basis of their option, they started drawing more wages than the seniors, senior workmen ought to have been granted second opportunity to exercise their option, no matter whether that second option was not exercised

before the stipulated time.

6. The Labour Court, after adverting to the various materials and evidence let in on behalf of both the workmen and the Management, had come to the conclusion from cross-examination of the Management Witness that the Memorandum dated 1.4.1999 was displayed belatedly. Whiles, the Labour Court was guided by the fact that since the juniors to the concerned workmen were getting more pay than them, they were entitled to claim revised pay by allowing them to exercise the second option. If juniors were getting higher pay than the seniors, it would be a pay anomaly which had to be set right. The Labour Court referred to several decisions of the Hon'ble Supreme Court as found in the award and ultimately allowed the claim of the workmen and directed the petitioner Board to pay all the monetary benefits to the workmen concerned in the dispute from 01.10.1997 onwards after revising their pay in the basic pay of Rs.4570/- from 01.10.1997. In fact, the petitioner Board by proceedings dated 18.07.1998 has made it clear that if a junior gets more pay pursuant to his date of option for coming into the revised pay scale, then the pay scale of the senior has to be brought on par with the junior. When the Board proceedings provided clearly for setting right such pay anomaly, the senior workmen concerned in the dispute ought to have been allowed to exercise their option. In the said circumstances, the Labour Court has allowed the claim of the concerned workmen in the dispute and answered the reference in favour of the workmen.

7. As against the award of the Labour Court which was passed on 16.07.2012, the present Writ Petition in W.P.No.34591 of 2019 has been filed by the petitioner Board after a lapse of six years. In pursuant to the award of the Labour Court, since no Writ Petition was filed for considerable length of time, Claim Petitions in C.P.Nos.357 and 358 of 2013 have been filed by the beneficiaries of the award for computation of amounts due and payable to them in terms of the award passed by the Labour Court in I.D.NO.80 of 2006.

8. Shri Anand Gopalan, learned counsel appearing for the petitioner would submit that the award passed by the Labour Court has to be interfered with on the sole ground that the Labour Court has not given any finding as to non-exercise of option by the workmen concerned in the dispute before 31.05.1999. According to the learned counsel, the Labour Court was silent on this issue and it was merely guided by the fact that the juniors were getting more pay and therefore, the senior workmen concerned in the dispute ought to be granted revised pay on par with their juniors. According to the learned counsel, once Memorandum dated 01.04.1999 was issued and time was stipulated, unless, such option exercised within the time

stipulated, the workmen concerned were not entitled to seek for option. In fact, the learned counsel would submit that the Labour Court has not accepted the case of the workmen that the Memorandum dated 01.04.1999 was not circulated nor displayed in the Notice Board for them to claim that they were ignorant of such Memorandum. Therefore, the learned counsel would implore this Court to set aside the award of the Labour Court and also the orders passed by the Labour Court in Claim Petitions.

9. Per contra, the learned counsel appearing for the respondent Sangam, which representing the concerned senior workmen, Mr. Balan Haridoss would submit that first of all, the present Writ Petition has to be dismissed in limine on the ground of delay alone since no reasons were stipulated out explaining the delay in approaching this Court from the date of passing the award. Only after EP was filed, the petitioner Board woken up to the fact that the award was passed as early as on 16.7.2012 itself and approached this Court by filing the Writ Petition in 2018. The learned counsel would submit that in any event, the Labour Court has convinced that there was a pay anomaly as between the junior workmen and senior workmen and therefore, the said anomaly was sought to be rectified by ordering revision of pay in the revised pay scale with effect from 01.10.1997 which benefit was conferred on the junior workmen on their exercising the second option. Although there was no specific finding given by the Labour Court in regard to the time stipulated by Memorandum dated 1.4.1999 and also non-exercise of option by the senior workmen, nevertheless the fact remains that the senior workmen were given lesser wages than the junior workmen and therefore, such glaring pay anomaly cannot be allowed to persist and continue. Therefore, the Labour Court has rightly allowed the claim of the senior workmen in the dispute and the award ultimately passed by the Labour Court does not call for interference.

10. The learned counsel for the respondent would also submit that Claim Petitions have been filed in CP Nos. 357 and 358 of 2013 and the Labour Court has finally computed the amount payable to the workmen concerned. He pointed out that the computation as arrived at by the Labour Court was not disputed at all by the management. In fact, the finding of the Labour Court while passing the order in the Claim Petitions is that the Management has not objected to the computation of the amount payable to the workmen nor questioned the bona fides of the workmen's claim for computation of the amount due to the concerned workmen in pursuant to the award passed by the Labour Court in I.D.No.80 of 2006. Even otherwise, the learned counsel would submit that the Board proceedings dated 18.7.1998 did not prescribe any time and therefore, the question of expiry date for exercising option cannot be held against the senior workmen

when such glaring pay anomaly was starring at them. Therefore, he would implore this Court to dismiss all the Writ Petitions.

11. Heard the learned counsel appearing for the petitioner Management as well as the learned counsel for the respondent Sangam.

12. As regards the objections regarding belated approach of the petitioner Board in filing the Writ Petition is concerned, this Court is in agreement with the submissions made on behalf of the workmen by the learned counsel Shri Balan Haridoss that the delay in filing the Writ Petition against the Award of the Labour Court dated 16.7.2012 of more than six years is fatal since no proper explanation was spelt out in the affidavit filed in support of the Writ Petition. In fact, a feeble attempt was made by the learned counsel appearing for the Board by drawing attention of this Court to an affidavit filed by Thiru A.Gopi, who was a contractor, later on absorbed as regular employee of the Board, who had sworn to the affidavit and had stated that for inexplicable reason, no steps were taken to file the Writ Petition and the blame should be put on the deponent of the affidavit. This Court is unable to appreciate such submission made on behalf of the petitioner Board. When it has hierarchy of the officers manning various positions and those officers cannot abdicate their responsibility in not pursuing the appropriate remedies available to them to question the award of the Labour Court and cannot make a former contract labourer as scape goat only to provide explanation for the management's delay in filing the Writ Petition. The affidavit explaining the delay filed by the deponent Shri A.Gopi does not carry any conviction before this Court and the same is rejected as being not a serious attempt by the petitioner Board to explain the delay for approaching this Court. Therefore, on the ground of delay alone, the Writ Petition in W.P. No.34591 of 2019 is liable to be dismissed.

13. Even otherwise, this Court is in complete agreement with the submissions made on behalf of the workmen concerned that rightly or wrongly there was a pay anomaly between the junior workmen and senior workmen and such pay anomaly need not be allowed to continue causing legitimate heart burn to the senior employees during their career with the petitioner Board. Therefore, the senior workmen have a right to seek for parity with the junior workmen as improper fixation of pay is a recurring and continuous cause of action and the right to claim proper fixation of pay cannot be restricted to any particular cut of date. In fact, the learned counsel for the petitioner Board has read out a relevant portion of the Board proceedings No.58 dated 18.7.1998 which reads that, "... if a junior gets more pay pursuant to his date of option for coming into the

revised pay scale, then the pay scale of senior has to be brought on par with the junior."

14. In fact, the learned counsel has fairly submitted that no time limit was fixed in the Board proceedings for setting right the pay anomaly. Therefore, this Court finds that the approach of the Labour Court in setting right the pay anomaly by granting revised pay scale and pay with effect from 01.10.1997 to the senior workmen concerned in the dispute, cannot be faulted with. Therefore, the principal contention for resiting the claim by the petitioner before this Court on behalf of the management that the Labour Court has not given any finding in regard to exercise of option by the workmen is concerned within the stipulated time, becomes insignificant and immaterial in the light of the above Board proceedings.

15. Even otherwise, this Court is of the considered view that the pay anomaly suffered by the senior workmen cannot be ignored or cannot be denied only on the ground that the senior workmen have not exercised the option within the time stipulated. In fact, the Labour Court has not given any definite finding in regard to the availability of the Memorandum dated 01.04.1999 to the knowledge of the workmen concerned. In any event, even assuming that the workmen were aware of the second option provided by the Memorandum dated 01.04.1999, non-exercise of option within the date stipulated, cannot be held against them since the right to claim parity with their juniors is a constitutional right and the same cannot be denied to them by sticking to any cut of date. Since the petitioner Board is a Government undertaking, it has to treat all the employees equally and the senior employees cannot be allowed to draw lesser wages than the junior employees, as such wage disparity would be irrational, unreasonable, arbitrary and violative of Article 14 of the Constitution.

16. More over this Court finds that the Labour Court has correctly applied its mind to the materials placed on record and also the evidence let in by both the petitioner Board as well as the workmen and only after due appreciation of the evidence, it has come to the conclusion that the senior workmen concerned in the dispute need to be granted the relief as prayed for. Such approach by the Labour Court does not call for any interference from this Court. This Court finds that the Labour Court has passed the award on valid consideration of the claim of the senior workmen with reference to the Board Proceedings dated 18.7.1998 and also with reference to the legal principles laid down on the subject matter. Therefore, this Court does not think that the award of the Labour Court suffers from any infirmity calling for interference.

17. For the above said reasons, the Writ Petition in W.P.No.34591 of 2018 is dismissed both on the grounds of laches as well as on merits.

18. In view of the dismissal of W.P.No.34591 of 2019 filed against the award of the Labour Court in I.D.No.80 of 2006, the other two Writ Petitions, viz., W.P.Nos.34593 and 34598 of 2018 which are filed against the order, dated 18.10.2016 passed by the Labour Court in Claim Petition Nos.357 and 358 of 2013 are only a consequential order of the Labour Court and therefore, the same have to necessarily meet the same fate as that of the Writ Petition in W.P.No.34591 of 2018. Accordingly, the Writ Petitions, viz., W.P.Nos.34593 and 34598 of 2018 are dismissed. This Court is also informed that the computation of the amount payable to the workmen is valid and correct and therefore, the order passed by the Labour Court in Claim Petition Nos.357 and 358 of 2013 is hereby upheld. No costs. Consequently, all connected WMPs are closed.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

Suk

To

The Superintending Engineer,
Chennai Electricity Distribution
Tamil Nadu Generation and Distribution
Corporation Limited (Formerly known as
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai-600 002.

Copy To
The Presiding Officer,
II Additional Labour Court,
Chennai.

+1cc to Mr.Balan Haridoss, Advocate SR.No.31766

+2cc to M/s.T.S.Gopalan & Co, Advocate SR.No.31773,31774

WP.Nos.34591, 34593
& 34598 of 2018

PA (CO)
GMY (06/06/2019)