



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
27.02.2020	03.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.32783 and 32784 of 2014

P.Venkatasubramani ... Petitioner in W.P.No.32783/2014
C.Murali ... Petitioner in W.P.No.32784/2014

Vs.

1. Tamil Nadu Generation and Distribution Corporation Ltd.,
Rep. by its Chairman cum Managing Director,
NPKKR Maligai, No.144, Anna Salai, Chennai-2.
2. The Chief Engineer/IT/TNEB (TANGEDCO)
X Floor, NPKKR Maligai,
No.144, Anna Salai, Chennai - 2 ... Respondents in both W.Ps.

Prayer in W.P.No.32783 of 2014:

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in connection with the impugned order of the second respondent viz., D.117/dt.5.4.2014 and quash the same and direct the respondents to confer the Selection Grade in the post of Revenue Supervisor with effect from 16.12.2011 with all attendant benefits including monetary benefits.

Prayer in W.P.No.32784 of 2014:

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to confer the Selection Grade in the post of Revenue Supervisor with effect from 16.12.2011 with all attendant benefits including monetary benefits.



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For Petitioners : Mr.V.Prakash
in both W.Ps. Senior Counsel for
Mr.K.Krishnamoorthy
For Respondents : Mr.Karthick Rajan, T.N.E.B.
in both W.Ps.

COMMON ORDER

As the relief sought for in both writ petitions is one and the same and the respondents in both writ petitions are also same, the writ petitions are disposed of by a common order.

2. Challenge in the writ petition in W.P.No.32783 of 2014 is against the order passed by the second respondent, dated 05.4.2014 rejecting the request of the petitioner for granting Selection Grade increment, by stating that the appointment in the post of Supernumerary Revenue Supervisor is purely on temporary basis and the petitioner joined the post of regular Revenue Supervisor on 23.11.2006 and therefore, service of the petitioner will be counted from 23.11.2006. The writ petitioner in W.P.No.32784 of 2014 seeks a Writ of Mandamus, directing the respondents to confer the Selection Grade in the post of Revenue Supervisor with effect from 16.12.2011 with all attendant benefits including monetary benefits.

3. The case of the writ petitioners in brief is as follows:

The writ petitioners joined the service as an Office Helper in the respondent Corporation in the year 1977 and they were promoted to the post of Assessor on 26.12.1981, thereafter, the petitioner in W.P.No.32783 of 2014 was promoted to the post of Inspector of Assessment on 1.8.1992 and he was conferred with Selection Grade Inspector of Assessment on 1.8.2001. The petitioner in W.P.No.32784 of 2014 was promoted to the post of Inspector of Assessment on 9.9.1992 and he was conferred with Selection Grade Inspector of Assessment on 9.9.2001. Thereafter, on completion of 10 years of his service in the post of Inspector of Assessment, the petitioners have joined the upgraded post of Supernumerary Revenue Supervisor on 16.12.2002 and their pay was fixed in the regular time scale of pay i.e. Rs.5600-175-10150 with effect from 16.12.2002 and subsequently, the promotion in the post of Revenue Supervisor was regularized with effect from 22.11.2006 and 25.1.2008 respectively without



any pay fixation.

4. Counter affidavits have been filed by the second respondent wherein it is stated as under:

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The writ petitioners have joined the service of Tamilnadu Electricity Board as Office Helper on 25.2.1977 and they were promoted as Assessor on 26.12.1981 and they were promoted as Inspector of Assessment on 1.8.1992 and 9.9.1992 respectively. The next promotional post to the petitioners was Revenue Supervisor which was also Class III service. The writ petitioners having completed 10 years of service in the post of Inspector of Assessment, the post was upgraded as Supernumerary Revenue Supervisor and the pay had been fixed as per the Regulations 33(b) in the regular time scale of pay Rs.5600-175-10150 w.e.f. 16.12.2002. Subsequently, as per the seniority, the petitioners were promoted to the next post of Regular Revenue Supervisor and they have joined on 23.11.2006 F.N. and 8.2.2008 F.N. respectively and they were promoted as Assessment Officer on 22.03.2012 and 29.01.2013 respectively. The writ petitioners have rendered only 5 years and 3 months and 4 years and 10 months respectively in the post of Regular Revenue Supervisor. The service rendered in the post of Regular Revenue Supervisor alone would be taken into account for the next promotional post of Assessment Officer. The orders were issued in (Per) B.P. (FB) No.68, dated 25.11.2002, to the effect that those who had completed 10 years of service in the category of Inspector of Assessment as on 12.11.2012 were to be considered for promotion as Supernumerary Revenue Supervisor based on B.P. Wherever the post of Inspector of Assessment is not sanctioned, Supernumerary Revenue Supervisor shall do the work of Inspector of Assessment. According to the second respondent, insofar as the award passed by the II Additional Labour Court in I.D.No.2 of 2004 and B.P.No.49, dated 16.4.2014 ordering to count the contract period of service rendered by the Assessors prior to 01.12.1983 also for movement of Selection Grade, the temporary appointment on contract basis as 'Assessor' could not be taken into account for calculating service and cannot be made applicable for Supernumerary Revenue Supervisor post. Further, it is submitted that due to non availability of the post of Revenue Supervisor and the stagnation in promotion, they were upgraded as Supernumerary Revenue Supervisor, but it had also been ordered that Supernumerary Revenue Supervisor shall attend the work of Inspector of Assessment where vacancies had arose in the post of Revenue Supervisor and the Supernumerary Revenue Supervisor would be promoted as Regular Revenue Supervisor. Thus, the seniority for promotion would be taken into account only from



the date of their regular appointment as Revenue Supervisor. The petitioners had not completed 10 years of service in the post of Regular Revenue Supervisor and the service rendered by the petitioners in the upgraded post of Supernumerary Revenue Supervisor cannot be included with the service rendered in the Regular Revenue Supervisor. Therefore, the petitioners are not eligible for Selection Grade in the post of Regular Revenue Supervisor.

5. Heard the learned Senior counsel appearing for the petitioners, the learned Standing counsel appearing for the respondents and perused the materials available on record.

6. According to the learned Senior counsel appearing for the petitioners, Supernumerary post in the Revenue Supervisor post could not be created under Regulation 106 of the Tamilnadu Electricity Board as the concept of creation of Supernumerary Revenue Supervisor runs against Regulation. The Supernumerary post would exist till the person appointed in that post either superannuated or died. In the case of petitioners, while appointing him in the post of Supernumerary Revenue Supervisor, nowhere it had been stated that the post is created for meeting certain contingencies. The procedure of reckoning the service of 9 years from the date of regular appointment was given up by the second respondent and the service rendered even prior to regular appointment i.e. training period on consolidate wages also was taken into account for reckoning period of service for the purpose of movement to Selection grade to the category of Workmen as per Board memo, dated 22.3.2008. The impugned order passed by the second respondent is against the memo issued by the Board. The II Additional Labour Court by award in I.D.No.2 of 2004, dated 18.12.2012, has clearly stated that temporary service rendered by the Assessors prior to 1.2.1983 also to be counted for movement to Selection grade. Therefore, it is not open to the respondent to exclude the service rendered in the post of Supernumerary Revenue Supervisor. The first respondent has counted the service rendered under contract basis for movement to Selection Grade for the Assessors and has issued proceedings No.49, dated 16.4.2014. The denial of service weightage to the petitioner for the period rendered in the supernumerary post to confer Selection Grade is highly arbitrary and violative of Article 14 of the Constitution of India. Therefore, the impugned order, dated 5.4.2014 passed by the second respondent is liable to be set aside.



7. In support of his submission, the learned Senior counsel appearing for the petitioners placed reliance on the decision rendered by the Allahabad High Court in PRAMOD KUMAR TRIVEDI VS. STATE OF U.P. THROUGH SECRETARY MADHYAMAIAK [SERVICE SINGLE No.8235 OF 2008] wherein it has been held as follows:

'Admittedly, appointment of the petitioner was made against the post of Junior Clerk which under the proviso appended to aforequoted Regulation 106 of Chapter III of Regulations, was deemed to have been created for the reason that no vacancy in the institution was available at the relevant point of time.

Proviso appended to Regulation 106 of Chapter III of the Regulations envisages a situation where mandate of the rule for appointment on compassionate ground is to be followed but vacancy is not available. The framers of Regulations have, thus, inserted a legal fiction in the proviso and have provided consciously that in such a situation where vacancy is not available, the post shall be deemed to have been created. As a result of operation of the legal fiction contained in said proviso, though in a given case there may not be any vacancy against which compassionate appointment can be made but a supernumerary post has been assumed to come into being for giving effect to the mandate of Regulation 106'.

8. The learned Senior counsel appearing for the petitioners relied on the judgment of this Court in S.RADHA VS. STATE OF TAMILNADU REP. BY THE SECRETARY TO GOVT., P.W.D. AND TWO OTHERS [W.P.No.38587 of 2006 (O.A.No.6309 of 1999) wherein it has been held as follows:

'After the petitioner was appointed as Draughtsman Grade-III (Junior Drafting Officer) on 23rd Feb., 1980, through employment exchange, she continued to work till 5th June, 1983. Subsequently, the Chief Engineer, 2nd respondent herein, appointed the petitioner temporarily as Draughting Officer (Draughtsman Grade-II) on 6th Sept., 1983. Accordingly, the petitioner also joined duty on 6th Oct.,



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1983. Thereafter, for want of vacancy, she was reverted back on 31st Oct., 1983, to the post of Junior Draughting Officer. However, she was promoted as Draughting Officer on 31st March, 1984 and she was posted to work in the Estate Officer, Tamil Nadu Agricultural University, Coimbatore on deputation. On her promotion, she joined duty on 7th May, 1984 as Draughting Officer. Later on, the petitioner made a written request dated 11th Jan., 1989, to the Superintending Engineer, Public Works Department, Pollachi, to regularise her services as Draughting Officer. The 3rd respondent, by issuing order dated 3rd Feb., 1989, in proceeding No.Aatchi 4(1)/38310/89-55, again reverted the petitioner as Junior Draughting Officer indicating that the petitioner has become junior in one unit seniority. On that basis, she was posted as Junior Draughting Officer to the construction division in Coimbatore.

2. Aggrieved by the said reversion order as Junior Draughting Officer after a period of six years, the petitioner filed O.A. No.1307/89 on the file of the Tamil Nadu Administrative Tribunal for quashing the order of reversion. The Tribunal, by order dated 16th Sept., 1989, in a batch of connected O.A. Nos.188/89, etc., directed to create certain number of supernumerary posts in lieu of equal number of posts in the lower category so that eligible persons, whose claims have been overlooked in view of the implementation of the orders earlier given, can be suitably protected.

3. Mr. Vadivelu, learned counsel appearing for the petitioner submits that in the light of the above order passed by the Tribunal in O.A. No.1307/89, the services of the petitioner should be regularised as Draughting Officer w.e.f. 6th Oct., 1983, the date of her joining as Draughting Officer with increment and pay protection. As the respondents have not shown any favourable response, the



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petitioner was constrained to file Contempt Application No.447/96 in O.A. No.1307/89. Subsequently, the Government, by issuing G.O. Ms. No.395 PWD dated 22nd June, 1996, created 340 supernumerary posts of Draughting Officer w.e.f. 27th Sept., 1982, to protect the promotion made to the Junior Draughting Officer prior to the amendment of the rules. Subsequently, another proceeding dated 30th June, 1989, was issued by the Chief Engineer, 2nd respondent herein, releasing the panel for the post of Draughting Officer for the year 1998-1999, wherein the name of the petitioner was found in S. No.46 in the annexure with one unit seniority No.185. Subsequently, the Engineer in Chief and Chief Engineer (General), 2nd respondent herein, by issuing a circular No.S4 (V)/35346/96 dated 10th Sept., 1999, informed that 340 Junior Draughting Officers are selected for promotion as Draughting Officer in the newly created post of Draughting Officer by again indicating that the Junior Draughting Officers so promoted as Draughting Officers in the supernumerary posts are eligible to get their pay fixed on par with their junior, K.Palanisamy w.e.f. the actual date of joining the post of Draughting Officer. Based on the above order, the 3rd respondent, Superintending Engineer, promoted the petitioner as Draughting Officer in the supernumerary post w.e.f. the date of joining the said post.

.....10. When G.O. Ms. No.395, Public Works Dept., dated 22nd June, 1998 was issued, the Government Order had specifically accorded sanction for creation of 340 supernumerary posts in the category of Draughting Officer w.e.f. 27th Sept., 1982, the date on which K.Palanisamy was promoted to accommodate the personnel mentioned in the annexure to the Government Order. The said order further directs that the individual to be accommodated against supernumerary posts created by the said Government Order are



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eligible to get their pay fixed on par with K.Palanisamy w.e.f. the date of the individual joining the post of Draughting Officer, which makes the position clear that the petitioner is also eligible to get her pay fixed on par with K.Palanisamy w.e.f. the date of joining the post of Draughting Officer. The term 'supernumerary post' is a term of art, well recognised in service jurisprudence. The following are the features of the supernumerary post :-

- i) It is always a permanent post;
 - ii) It is created to accommodate the lien of an officer, who in the opinion of the authority competent to create such a post, is entitled to hold a lien against the regular permanent post;
 - iii) It is created due to non-availability of a regular permanent post. Such post is personal to the officer for whom it is created and stands abolished as soon as the officer for whom it was created vacates it;
 - iv) It is a shadow post, inasmuch as no duties are attached to it and the officer concerned performs duties in some other vacant temporary or permanent post.
- In the above background, when the Government Order candidly mentions that the individuals so accommodated in the supernumerary posts are eligible to get their pay fixed on par with K.Palanisamy w.e.f. the date of their joining the post of Draughting Officer, the Chief Engineer, 2nd respondent herein, instead of acting on the basis of the mandate given by the Government in G.O. Ms. No.395, by allowing the petitioner to enjoy the benefits of protection in terms of post as well as pay, the very purpose of issuance of G.O. Ms. No.395 would be defeated if they are not paid with the financial benefits on par with K.Palanisamy. It is relevant to keep in mind that when the Government has passed G.O. Ms. No.395 conferring the individuals to enjoy the benefits of supernumerary posts on par with



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K.Palanisamy w.e.f. the date of their joining the post of Draughting Officer, the 2nd respondent cannot sit on the mandate issued by the Government in G.O. Ms. No.395 and limit the benefit of supernumerary posts to the petitioner by saying that the petitioner is entitled to get the benefit only from the date of creation of the supernumerary post, since this is not the intention of the Government.''

9. In the case of PRAMOD KUMAR TRIVEDI, supra, the appointment on compassionate ground was made as a Junior Clerk in supernumerary post wherein it has been held that the service rendered by the petitioner against supernumerary post, which would be deemed to have come into existence under the proviso appended to Regulation 106 of Chapter III of the Regulations, is to be counted for the purpose of determining his eligibility for promotion to the post of Head Clerk.

10. In the case of S.RADHA cited supra, the petitioner therein was promoted as Draughting Officer and subsequently, she was reverted as Junior Draughting Officer. Challenging the said order, the petitioner therein preferred O.A.No.1307 of 1989 before the Tamilnadu Administrative Tribunal wherein the reversion order was set aside. As the respondents failed to implement the said order, Contempt Application No.447 of 1996 in O.A.No.1307 of 1989 has been filed. Pursuant to the filing of the contempt petition, the respondent department created 340 supernumerary posts of Draughting Officer with effect from the date of joining in the said post. Under these circumstances, this Court held that the petitioner is entitled to have the benefit from the date of the petitioner joining the post of Draughting Officer.

11. In the case on hand, the petitioners were promoted as supernumerary Revenue Supervisor. However, the supernumerary Revenue Supervisor shall continue to attend the work of Inspector of Assessment. Now, let us see the service Regulation of the respondent Board. Regulation No.24-A of Tamil Nadu Electricity Board Service Regulations reads as follows:

''(24-A_ Supernumerary Post means a person oriented post created for a limited period and for a limited purpose to accommodate a person in certain contingencies.



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RULINGS

(i) A Supernumerary Post is normally created to accommodate the lien of an employee who in the opinion of the authority competent to create such a post, is entitled to hold a lien against a regular permanent post but due to non availability of a regular permanent post, cannot have his lien against such a post;

(ii) It is a shadow post, that is no duties are attached to such posts. The officer whose lien is maintained against such a post, generally performs duties in some other vacant temporary or permanent post;'

12. As per the Regulation 24-A cited supra, no duties are attached to the Supernumerary post and those who are posted in Supernumerary post, allocated work in some other vacant post. Further, the petitioners were appointed in the post of Supernumerary Revenue Supervisor on temporary basis vide orders of the Chief Engineer/Personnel in Letter No.057157/378/G25/G2512001-19, dated 5.12.2002 in terms of the orders issued in B.P.(FB) No.68, Secretariat branch, dated 25.11.2002. As per the orders, dated 25.11.2002 issued in B.P.No.68, Supernumerary Revenue Supervisor shall attend the work of Inspector of Assessment. Admittedly, the petitioners were promoted as Revenue Supervisor from the earlier post of supernumerary Revenue Supervisor, on regular basis with effect from 23.11.2006. Further, in the affidavit filed by the second respondent it is stated that as per the Service Register, the petitioners were performing the duties and responsibilities of an Inspector of Assessment inspite of temporarily appointed as supernumerary Revenue Supervisor. They were posted as Revenue Supervisor on regular basis against the vacant post of Revenue Supervisor, as such, they performed the duties and responsibilities of a Revenue Supervisor only on and from 23.11.2006, the date on which he assumed charge as Revenue Supervisor in Sholinganallur Section. Further, as per clause (g) of the proceedings in Ms.No.288, issued by the Secretariat Branch of the respondent Board, dated 3.12.1979, it is clearly stated that the period of 10 years in a post will be reckoned from the date of regular appointment to the post. The relevant portion of the proceedings are extracted hereunder:

'Board Proceedings Ms.No.288 (Sectt.Branch)
Dt.3.12.1979

PROCEEDINGS:

1.In G.O.Ms.No.1050, Finance (Pay Commission),
dated 5.10.1978, the Government of Tamilnadu



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have issued orders permitting the Government employees in a number of categories in the middle and lower levels to move to higher posts/selection grade/special grades on higher scales of pay on completion of 10 years of service in the posts, if they are otherwise found fit for normal promotion of advancement.

2. In order to relieve stagnation among the employees of the Board, the Unions of employees of the Board have been requesting for the grant of the benefit of higher scales of pay to such of the employees to continue in the same time scale for certain years. Representations have also been received for the creation of special grade posts in various categories.

3. The Tamilnadu Electricity Board has considered the representations referred to in para 2 above and passes the following orders:-

(a) A person holding a post in the categories carrying the following pre-revised/revised scales of pay existing in the Board shall be allowed to move to Selection grade on completion of 10 years of satisfactory service in the ordinary Grade.

.....

The scales of pay applicable to such Selection Grades shall be as mentioned below:

i) Wherever special grade or selection grade posts are existing at present for any category, the scale of pay applicable to such special grade or selection grade posts shall be allowed as selection grade scale of pay with reference to the orders in these proceedings.

ii) In other cases (upto the level of the employees carrying the scales of pay mentioned above only), the scales of pay applicable to the next higher category in the line of promotion shall be allowed as selection grade scale of pay. In cases where there is no higher category in the line of promotion for any post, no selection grade scale of pay shall be allowed. Adopting the above principles, the holders of the posts in the categories mentioned in column (1) of the Annexure to these proceedings shall have the scale of



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pay of the categories indicated in corresponding entry in column (2) thereof, as selection grade scales of pay.

(b) The present total number of posts available in a category in the ordinary grade, special grade and selection grade (selection grade posts sanction with reference to existing schemes as well as those sanctioned with reference to this order) shall be taken together and no fresh sanction should be asked for with reference to to this scheme of advancement to selection grade. Within the total number, the Chief Engineer (General) or the Authority competent to order promotions can vary the numbers among the ordinary, existing special/ selection grade and selection grade with reference to this order, depending on the advancement of personnel from one grade to another.

(c) This new scheme of selection grade will come into effect from 1st January, 1979.

(d) Fixation of pay under Regulation 33(b) of the Tamilnadu Electricity Board Service Regulations shall not be applicable for the persons who are appointed to selection grade from the ordinary grade. The employees moving to the selection grade shall be allowed fixation of pay at the next higher stage whether the pay in the ordinary existing special/selection grade represents a stage in the scale of pay in the selection grade with rerefence to this order or not.

(e) The pay of an employee appointed to the selection grade (with reference to this order) on the date of accrual of increment in the ordinary grade or existing special/selection grade post shall be fixed without taking into account the increment that accrued in the ordinary grade or existing special/selection grade scales of pay and then he shall be allowed to draw his increment on that date in the selection grade scale of pay.

(f) Employes who are on other duty shall also be appointed to selection grade.



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(g) Leave other than extraordinary leave without pay and allowances should be taken into account while computing the 10 year period. The period of ten years in a post will be reckoned from the date of regular appointment to the post but will exclude the periods of reversion.

13. Thus, the respondent Board in the aforesaid proceedings, has specifically stipulated a condition that the period of ten years of service in a post will be taken into account from the date of regular appointment in the said post. The Selection grade can be granted to an employee who have completed 10 years of service in a regular post. However, taking note of the aforesaid proceedings, the respondent Board reduced the 10 years period to 9 years for movement to Selection Grade. Further, As per Regulation 24-A Supernumerary post is a tempoary post and a person who was appointed in the said post generally performs the duties of other vacant post. Therefore, the aforesaid decisions relied upon by the learned Senior counsel appearing for the petitioners will not support the contentions of the petitioner.

14. In view of the above, the service rendered by the petitioners can be calculated from the date of appointment in the regular post of Revenue Supervisor i.e. 23.11.2006 and 8.2.2008 respectively, for grant of Selection grade and the service rendered by the petitioners in the upgraded (lower) post viz., supernumerary Revenue Supervisor cannot be counted along with the service rendered in the present post of Revenue Supervisor. Therefore, there is no warrant to interfere with the order passed by the second respondent, dt.5.4.2014 and the writ petitions are liable to be dismissed.

15. Accordingly, the writ petitions stand dismissed.
No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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1. Tamil Nadu Generation and Distribution Corporation Ltd.,
NPKKR Maligai, No.144, Anna Salai, Chennai-2.



2. The Chief Engineer/IT/TNEB (TANGEDCO)
X Floor, NPKKR Maligai, No.144, Anna Salai, Chennai - 2.

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Pre-Delivery Order in
W.P.No.32783 of 2014

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