

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

WP NO.2715 OF 2015

Tamil Nadu Electricity Board Accounts
and Executive Staff Union (Regd.No.2472)
Rep. by its General Secretary
29, Meeran Sahib Street,
Anna Salai, Chennai - 600 002. Petitioner

Versus

1.The Presiding Officer
Industrial Tribunal
Tamil Nadu
Chennai - 104.

2.Tamil Nadu Electricity Board
(Now Tamil Nadu Generation and
Distribution Corporation Ltd.)
Rep. by its Secretary
N.P.K.K.R. Maaligai, 10th Floor,
144, Anna Salai, Electricity Avenue,
Chennai - 600 002. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned award dated 30.01.2013 in I.D.No.09 of 2010 pronounced by the 1st respondent and quash the same and further direct the 2nd respondent to re-fix the existing scale of pay as of the year 2000, viz. 4450-130-8350 to the Pharmacists and the consequential revision of wages with all other attendant benefits and monetary benefits.

For Petitioner : Mr.V.Prakash
Senior Counsel
for Mr.K.Krishnamoorthy

For Respondent-2 : Mr.Karthik Rajan
Senior Standing Counsel

O R D E R

Inveighing the award passed by the first respondent / Industrial Tribunal refusing to fix the revised scale of pay of the Members of the petitioner / Union from the date of their appointment, the petitioner / Union has preferred the above Writ Petition.

2.The present Writ Petition pertains to the post of Pharmacists. In the Board Proceedings of the second respondent / TANGEDCO in BP (F.B) No.55, dated 19.09.1989, a decision was taken to fix the scale of pay for the category of Pharmacists. Originally, the pay scale was fixed at Rs.126-250. Thereafter, by way of B.P.(FB) No.57 dated 05.08.1989, it was revised as Rs.990-1740. It was reported to the Board that there were no Pharmacists and hence the category of Pharmacists was abolished. Later, a decision was taken to appoint Pharmacists. Since the post of Pharmacists at pay scale of Rs.990-1740 was abolished, taking into account the Government pay scale at Rs.1350 - 2200, the scale of pay of fresh category of Pharmacists was fixed at Rs.1300 - 2260 by the respondent Board. As seen above, originally Pharmacists were part of the category drawing pay scale of Rs.990-1740. When a revision of pay scale was made in the year 1994, the scale of pay of Pharmacists was erroneously recorded along with other categories at Rs.990 - 1740 and a corresponding revision was fixed at Rs.1050 - 1840. This anomaly was rectified by way of an amendment in B.P.(FB) No.5, dated 25.01.1994. The amendment fixed the Pharmacists at Sl.No.177A. The existing scale of pay of Rs.1300-2260 was revised as Rs.1350 - 2440. However, in the next revision, which had happened in the year 1998, the same mistake had crept in instead of fixing the Pharmacists at Rs.1350 - 2440, once again they were fixed in the old scale of pay, corresponding to the pre-revised scale of pay of Rs.1050 - 1840 and it was revised as Rs.3370 - 5770 instead of fixing in the pre-revised scale at Rs.1350 - 2440 and revised scale of pay of Rs.4450 - 7570.

3.The petitioner / Union raised an industrial dispute in this matter. The Industrial Tribunal, after considering all the materials placed before it, came to a conclusion that the claim of the petitioner / Union is hit by doctrine of acquiescence. Since the revision was made pursuant to settlement between the petitioner / Union and the Management under Section 12(3) of the Industrial Disputes Act, 1947 after deliberation it cannot be revisited. The Industrial Tribunal, has observed that the Pharmacists have accepted the scale of pay mentioned and joined services as per the offer of appointment. Even after joining the services, they have not raised any objection. Once they have accepted the scale of pay, they cannot turn around and

seek for revised scale of pay at higher pay scales. For the period between 2000-2002, the consolidated compensation of Rs.100/- per month was paid and they should be satisfied with that and they cannot ask for retrospective revision of pay scales.

4.The Industrial Tribunal, relied on the evidence of the petitioner/ Union representative that they have participated and signed in the settlement and having knowledge of this pay scale. They have not raised any objection to it within six months of their appointment, therefore they cannot ask for revision of pay scale after so many settlements that had taken place. Therefore, the claim was held as not justified.

5.The learned counsel for second respondent would vehemently contend that as per the decision of the Hon'ble Supreme Court, this revision of scale of pay was made and fixed them on the pay scale. This absolutely will not give rise to recurring cause of action and whatever is not claimed at the relevant point of time, will not entitle the employees to claim the same with retrospective effect and it can be given only prospectively. He would contend that the Board has rightly fixed their pay scales and they cannot have any grievance and cannot ask for revision of pay scales with retrospective effect in view of the 12(3) settlement.

6.Heard the submissions made on either side and perused the materials available on record.

7.Admittedly, the pay scale of the Pharmacists was fixed on par with the Pharmacists, employed in the Government of Tamil Nadu, which is Rs.1300 - 2260. A perusal of all the wage settlements will show that the revision of pay scales at a particular percentage, en bloc, to all the categories from W1 to W8. It is true that the Pharmacists, who are 7 in number have taken up their appointment where it was mentioned the pay of the Pharmacists was Rs.3370 - 5770. But actually, they should have been fixed at Rs.4450 - 7570. In all the settlement talks, the Management and the petitioner / Union negotiated with regard to percentage of revision and it is applied en bloc to all the categories.

8.In the instant case also, the case of Pharmacists was not taken separately and discussions had not taken place post wise. The Pharmacists were erroneously shown at W2 class, instead of the higher class to which they are rightly belong to. Had the Pharmacists were shown in the right place, their pay scale would have been fixed at Rs.4450 - 7570. Because of the clerical error that had happened mechanically while typing the

annexures or wage structure, they were not fixed at the right scale of pay. This error was committed by the clerical staff repeatedly in spite of rectification of anomaly at previous instances. It is not the case of the Board that the Pharmacists are not entitled to the scale of pay.

9. Therefore, in the considered opinion of this Court, the findings of the Industrial Tribunal that the Members of the petitioner / Union waived their rights by virtue of an acquiescence to the order of appointment and continuous drawing of lesser pay scale, cannot be accepted. The pay scales corresponding to the post is a matter of right and it cannot be denied on the basis of waiver or settlement. Therefore, the Members of the petitioner / Union are entitled to be fixed at the right pay scale corresponding to the category of Pharmacists as per the Board Proceedings of the year 1994.

10. It is also pertinent to note that the Members of the petitioner/ Union were appointed in 2000. During which period, the pay scale was fixed at Rs.3370 - 5770. But, the next settlement had happened only in the year 2005, which took effect from 2002. In the 12(3) settlement, it was unanimously agreed to receive the consolidated pay of Rs.100/- per month, in lieu of this revision that was given en bloc to all the employees. Therefore, the said agreement is also binding on the petitioner Union. Hence, the Members of the petitioner / Union cannot have any claim between 2000 and 2002. The Members of the petitioner / Union are entitled to notional fixation of the pre-revised scale of Rs.1350 - 2440/- from the date of their initial appointment i.e., with effect from 13.01.2000 and revised pay scale of Rs.4450 - 7570/- with effect from 2002 on notional basis.

11. Considering the settlement under Section 12(3) of the Industrial Disputes Act, 1947, and periodical wage revision, this Court cannot grant or give retrospective effect to the pay fixation and it will take effect only prospectively. In other words, the fixation can be on notional basis, giving actual monetary benefits prospectively, from the date of filing of the writ petition i.e., 02.02.2015. The Members of the petitioner / Union will be entitled to the attendant benefits of increment and corresponding increase in pension, gratuity, provident fund etc., on notional basis from the year 2002 and on actual basis from the year 2015.

12. It is a specific case that the pay scale of the Pharmacists were fixed on par with the Government employees, which will be applicable only to the category of Pharmacists and therefore, it is made clear that this relief is restricted to the Pharmacists, who are 7 in number alone.

13.The writ petition is ordered accordingly. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

TK
To

1.The Presiding Officer,
Industrial Tribunal,
Tamil Nadu,
Chennai - 104.

2.The Secretary
Tamil Nadu Electricity Board
(Now Tamil Nadu Generation and
Distribution Corporation Ltd.)
N.P.K.K.R. Maaligai, 10th Floor,
144, Anna Salai, Electricity Avenue,
Chennai - 600 002.

+1cc to Mr.K.Krishnamoorthy, Advocate Sr.15611
+1cc to Mr.Karthik Rajan, Advocate Sr.15227

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