



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 25.04.2022

ORDERS PRONOUNCED ON : 06.06.2022

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
and
THE HON'BLE MRS. JUSTICE N.MALA

W.A.No.957 of 2022
and C.M.P.No.6177 of 2022

- 1.The Tamil Nadu Electricity Board,
Rep. By its Chairman,
No.800, X Floor, K.R.R.Maalgai,
Anna Salai, Chennai - 600 002.
 - 2.The Chief Internal Audit Officer,
Board Office Audit Branch,
K.R.R.Maalgai, 1 Floor,
No.800, Annasalai,
Chennai - 600 002.
 - 3.Superintending Engineer,
Cuddalore Electricity Distribution Circle,
Cuddalore.
 - 4.The Divisional Engineer,
Tamil Nadu Electricity Board,
100 KV Electricity Sub Station Campus,
Poothamur,
Virudachalam.
- ... Appellants/ Respondents
- vs.
- S.Jagadeesan ... Respondent/ Petitioner

Prayer: Writ appeal filed under Clause 15 of Letter's Patent, to allow the Writ Appeal and thereby set aside the Order dated 21.12.2020 issued in W.P.No.11327 of 2006 on the file of this Court.

Prayer in W.P.No.11327 of 2006:

Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the third respondent in Lr.No.5791/Admin.1/A3/F.WP.6688/05 dated 17.05.2005 and quash the same and consequently directing the respondents 1 to 4 to re-fix the pay by giving the petitioner 5% increase in the pay fixation as per (Per)B.P.(F.B)No.106 Secretariat Branch



dated 03.11.1994, on being promoted from the post of Foreman Grade I (Selection Post Junior Engineer Grade II) from the date of his promotion on 21.04.1997 till the date of his retirement. Thereafter, pay him the arrears of the pension on the revised pay and also the other accumulated terminal benefits and retirement benefits such as gratuity, D.C.R.G etc. together with interest thereon till date of payment.

For Appellants : Mr.P.Subramanian

For Respondents: Mr.V.Pushpa

* * * * *

J U D G M E N T

[Order of the Court was made by S.VAIDYANATHAN,J. and N.MALA, J.]

The unsuccessful respondent in the writ petition has filed the writ appeal challenging the order dated 21.12.2020 in the Writ Petition.

2.The writ petition was filed for a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the third respondent in Lr.No.5791/Admin.1/A3/F.WP.6688/05 dated 17.05.2005 and quash the same and consequently directing the respondents 1 to 4 to re-fix the pay by giving the petitioner 5% increase in the pay fixation as per (Per)B.P.(F.B.)No.106 Secretariat Branch dated 03.11.1994, on being promoted from the post of Foreman Grade I (Selection Post) to Junior Engineer Grade II from the date of his promotion on 21.04.1997 till the date of his retirement, and thereafter, pay him the arrears of the pension on the revised pay and also the other accumulated terminal benefits and retirement benefits such as gratuity, D.C.R.G. etc. together with interest thereon till date of payment.

3.The learned Judge allowed the writ petition directing the respondents to re-fix the pay by giving the petitioner 5% increase in pay and consequentially to pay all monetary benefits.

THE FACTS IN BRIEF RELEVANT FOR THE PURPOSE OF THE PRESENT WRIT APPEAL ARE AS FOLLOWS:

4.The petitioner joined in the service of the Tamil Nadu Electricity Board on 01.06.1960 and on completion of 38 years of service the petitioner attained the age of superannuation on 31.03.1998 as Junior Engineer Grade-II in the office of the third respondent i.e. the Superintending Engineer, Cuddalore Electricity Distribution Circle Cuddalore. The petitioner was settled his retirement benefits on superannuation from 01.04.1998 onwards. The petitioner was promoted to the post of Junior Engineer Grade II from the post of Foreman Grade I (Selection Grade) on 21.04.1997. According to the



petitioner on his promotion to the post of Junior Engineer Grade II, while refixing his pay the Tamil Nadu Electricity Board ought to have followed the procedure under regulation 33 (b) of the Tamil Nadu Electricity Board service Regulation and provided him an increase of 5% apart from the scale of pay applicable to the post of the Junior Engineer Grade II. The petitioner therefore sent a representation and also issued a legal notice to the respondent to refix the pay by giving him 5% increase in pay fixation on his promotion as Junior Engineer Grade II. As the respondent Board failed to reply to the representation and legal notice he filed the writ Petition in W.P.No.6688 of 2005 with a direction to refix his pay by giving 5% increase in pay fixation as per B.P.(FB) No.106 dated 03.11.1994 on his promotion as Junior Engineer Grade II from the date of his promotion and also to pay him arrears of pension on the revised pay along with other accumulated terminal benefits and retirement benefits like gratuity, DCRG etc., with interest. The Hon'ble Court was pleased to dispose the writ petition with a direction to the respondents to dispose the representation of the petitioner as well as the lawyer's notice sent by the petitioner within a period of eight weeks. In pursuance of the order in W.P.No.6688 of 2005, the third respondent rejected the claim vide order dated 17.05.2005 and therefore he was constrained to file the present writ petition. In the writ petition no counter was filed by the respondent. The learned Judge on perusal of records and on the basis of the arguments of the counsel's allowed the writ petition. Aggrieved by the said order of the learned Judge, the Electricity Board has filed the present writ appeal.

5.It is pertinent to note here that the appellant board filed a review petition and the same was dismissed by the learned Single Judge. The writ petitioner filed a Contempt Petition in Cont.P.No.1166 of 2021 and statutory notice returnable by four weeks was ordered on 25.03.2021.

SUBMISSIONS:

6.The counsel for the appellants submits that the benefit under Regulation 33 (b) is available only when the scale of pay of the lower post is lesser than the scale of pay of the higher post. In the present case as the appellant was promoted from the post of (Selection Grade) Foreman Grade I to Junior Engineer Grade II, his scale of (Selection grade) Foreman Grade I was higher than that of Junior Engineer Grade II and so Regulation 33 (b) was not extended to him. The learned counsel relied on the second proviso to Regulation 33 (b) and the clarification memorandum dated 12.05.1989 in support of his contentions.

7.The counsel for respondent on the other hand relied on BP (FB) No.11 dated 02.02.1987, BP (FB) No.106 dated 03.11.1994 and the clarification memorandum dated 07.03.2000 to drive home the point that the respondent was entitled to the benefit of Regulation 33(b) as the Board Proceedings and



the clarification Memorandum have extended the benefit of Regulation 33(b) on promotion to the higher post when the scales of pay of both the posts were identical on the reasoning that there was assumption of higher duties and responsibility on promotion to the higher post.

8. We have heard the counsels for both sides and perused the records. We consider it appropriate to examine Regulation 33 (b) of the Tamil Nadu Electricity Board Service Regulation, the Board Proceedings and the clarification Memorandum before appreciating the counsels contentions.

9. Regulation 33 (b) on which both counsels have relied on is as follows:

"(b) An employee on appointment or promotion to another post carrying duties and responsibilities of greater importance shall have his initial pay in the time scale of the higher post fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued.

Provided that provisions of regulation 40 (2) shall not apply in any case where the initial pay is fixed under this regulation.

Provided also that where an employee, immediately before his promotion or appointment to higher post carrying higher duties and responsibilities is drawing pay at the maximum of the time scale of the pay applicable to the lower post or has drawn stagnation increments beyond the maximum of the lower post his initial pay in the time scale of pay applicable to the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing the pay in the lower post by one increment equivalent to the amount by the stagnation increment under the Service regulation."

10. The clarification memo dated 12.05.1989 is as under:

In fact the following clarifications was issued as follows:

"When the Selection Grade Foreman Grade I, who are in the higher scale of pay of Rs.975-50-1125-60-1425-70-1705-80-1945, are promoted as Junior Engineer II Gr. Carrying the scale of pay of Rs.920-45-1145-50-1395-60-1635 they may be continued in the same scale applicable to lower post even after promotion. On the date of promotion, they



WEB COPY

shall be allowed pay fixation at the next higher stage and the next increment shall be allowed to them on the date of which they would draw the next increment had they continued in the lower post of Selection Grade Foreman I Grade."

11. We find that the respondent was drawing pay in the scale of pay of 2150-85-2575-95-3050-105-3680 in the post of (Selection grade) Foreman I. The scale of pay of Junior Engineer Grade II was Rs.1650-55-1925-65-2770. On promotion to the post of Junior Engineer Grade II, the respondent's pay was fixed at Rs.2150-85-2575-95-3050-105-3680 with one increment in lieu of promotion. This we find is in consonance with Regulation 33(b) and clarification memo dated 12.05.1989.

12. The respondent in spite of his pay in the (Selection Grade) Foreman Grade I being protected, claims 5% increase as per Regulation 33(b). We find that the respondent's claim is based on an incorrect reading of Regulation 33(b). The second proviso to Regulation 33(b) read with the clarification memorandum dated 12.05.1989 makes it clear that if the benefit of selection grade scale in the lower post is retained then his pay is fixed by adding one increment in lieu of promotion in the higher post. This is because the scale of pay of the higher post is lesser than that of the lower post. We therefore agree with the appellant on this point.

13. The respondent relies on BP (FB) 11 dated 02.02.1987, BP (FB) 106 dated 03.11.1994 and clarification memo dated 07.03.2000 in support of his claim for increase of 5% under Regulation 33 (b).

14. BP Ms. (FB) No.11 dated 02.02.1987 reads as follows:

"2. Following the liberalisation made by the Government in respect of their employees, the Tamil Nadu Electricity Board has decided to fall in line with the orders issued by the Government in this matter. Accordingly, the Tamil Nadu Electricity Board directs that when an employee of the Board is promoted/appointed to a higher post from Selection Grade of the lower post carrying identical scale of pay as the ordinary grade of the next higher post, pay shall be fixed either under S.R.33(b) of the Tamil Nadu Electricity Board Service Regulations with reference to the notional pay in the ordinary grade of the lower post on the date of promotion/appointment to the higher post with the 5% increase of pay with reference to such notional pay or at the stage in the ordinary grade of the higher post after adding one notional increment to the pay drawn in the Selection Grade Scale of the lower



WEB COPY

post, at his option. The option should be exercised within one month from the date of promotion/appointment and, if no option is exercised within the period, pay shall be fixed at the stage in the higher post equal to the pay after adding one notional increment to the pay drawn in the Selection grade of the lower post. In respect of those who were appointed between 1-12-84 and the date of this order, they should exercise the option within two months from the date of this order."

15.BP (FB) No.106 dated 03.11.1994 read as follows:

2.After careful consideration, the Tamil Nadu Electricity Board has decided to accept the demand for allowing promotion post's scales as Selection Grade scales to the above mentioned seven workmen categories also. Accordingly, the Tamil Nadu Electricity Board directs that for the seven categories mentioned in Column (1) of the Table below, with effect from 01-12-1992 in lieu of the selection grade scale of pay mentioned in Column (2) of the Table below (which are the revised scales correspondent to the pre-revised selection grade scales applicable to the categories prior to 1-12-1992, the revised selection grade scales of pay as mentioned in Column (3) of the Table below shall be allowed:-

TABLE

Category (1)	Existing Selection Grade Scale (2)	Revised scale as select on grade scale (3)
3.Foreman I Grade	1750-65-2075-75- 2450-85-2960	2150-85-2575-95- 3050-105-3680

16.The clarification memo dated 07.03.2000 is as under:
Memorandum No.10401-A3/A31/2000-1, (Secretariat Branch),
dated 07.03.2000

Sub: Establishment - Class II Service - R.W.E.
Employees promoted from Junior Engineer II Grade to
Junior Engineer I Grade - Fixation of pay under
Service Regulations 33(b) - Clarification - Issued.

Ref: 1) Memo No.6135/N2/86-2, dated 20.06.86.
2) (Per.) B.P. (FB) No.106, (Secretariat Branch),
dated 03.11.94.
3) Chief Engineer / Distribution / Coimbatore,
Lr.No.2149/183/Admn.1(1)/2000-1, dated 7.2.2000.



WEB COPY

The Chief Engineer/Distribution/Coimbatore Region has requested to clarify whether 33(b) fixation under Tamil Nadu Electricity Board Service Regulations can be allowed to a Junior Engineer II Grade (who was previously promoted from the post of Selection Grade Foreman I Grade) drawing pay in the scale of Rs.2150-3680 (pre-revised) as per orders in Board's Proceedings second cited on his further promotion as Junior Engineer I Grade in the same scale of pay of rs.2150-3680 (pre-revised) before movement to Selection Grade in the post of Junior Engineer II Grade.

2.The Chief Engineers/Superintending Engineers and other officers of the Board are informed that in the above case, 33(b) fixation ensuring 5% benefit may be allowed, as was allowed in the case of promotion from Foreman I Grade to Junior Engineer II Grade, in view of the assumption of higher duties and responsibilities irrespective of the fact that both the lower post scale and the higher post scale are identical.

(By Order of the Chairman)

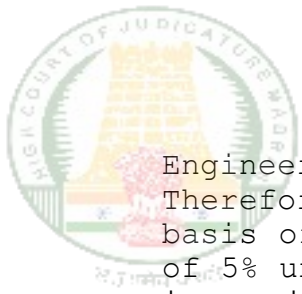
G.Gnanaselvam,
Secretary.

17.We find that none of the above Proceedings support the respondent's claim. BP (FB) No.106 deals with revision of selection grade scales of pay of the categories of employees referred to therein.

18.The reliance on B.P (FB). No.11 and clarification memo dated 07.03.2000 is also misplaced. We find that there is no identity of pay scales in the present case, which is a sine qua non for applying the said proceedings. As already stated supra, the scale of pay of (selection grade) Foreman Grade I is higher than the scale of pay of Junior Engineer Grade II. The said scales of pay are given below for better appreciation.

(Selection Grade) Foreman Grade I	2150-85-2575-95- 3050-105-3680
Junior Engineer Grade II	1650-55-1925-65- 2770

19.The appellants' have rightly fixed the pay of the respondent by taking the selection grade pay of the respondent in the Post of Foreman Grade II and adding one increment in lieu of promotion as laid down in clarification memo dated 12.05.1989. One other aspect that we would like to highlight here is that in the clarification memo dated 07.03.2000 on which the respondent's counsel placed heavy reliance, it is clearly stated that there is an identity of scale of pay of Selection Grade Foreman Grade I who was promoted as Junior



Engineer Grade II with that of Junior Engineer Grade I. Therefore the stand of the respondent's counsel that on the basis of the said memo, the respondent is entitled to increase of 5% under Regulation 33 (b) is untenable in as much as there is no identity of pay scale between (Selection Grade) Foreman Grade I and Junior Engineer Grade II. The appellants stand is further fortified by the said Memorandum as it clearly states that if the Junior Engineer Grade II move to selection grade, then the benefit of 33(b) will not be applicable to such cases.

20. In the light of the above discussions we are of the considered view that the respondent is not entitled to the benefit of 5% increase in pay under Regulation 33(b) and the consequential benefits thereof.

21. In fine, the Writ appeal is allowed, the order passed in W.P.No.11327 of 2006 dated 21.12.2020 is set aside. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ah
To

1. The Chairman,
Tamil Nadu Electricity Board,
No.800, X Floor, K.R.R.Maalgai,
Anna Salai, Chennai - 600 002.
2. The Chief Internal Audit Officer,
Board Office Audit Branch,
K.R.R.Maalgai, 1 Floor,
No.800, Annasalai, Chennai - 600 002.
3. Superintending Engineer,
Cuddalore Electricity Distribution Circle,
Cuddalore.
4. The Divisional Engineer,
Tamil Nadu Electricity Board,
100 KV Electricity Sub Station Campus,
Poothamur, Virudachalam.

+1 cc to Mr.P.Subramanian, Advocate Sr.NO.32479

+2 ccs to M/s.V.Pushpa, Advocate Sr.NO. 32981

W.A.No.957 of 2022
and C.M.P.No.6177 of 2022

sj (CO)
A.SK(15/06/2022)