



W.P.(MD).No.21032 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.21032 of 2015

and

M.P.(MD).No.1 of 2015

Maharajan

... Petitioner

Vs.

The Superintending Engineer,
Tuticorin Thermal Power Station,
(Procurement and Administration),
Tuticorin – 4.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the respondent made in கு.எண்.DD1 /மே.பா.பொ/கொ&நி/நி.பி- 5உ- /கோ.தணிக்கை/2015-1 dated 19.10.2015 and the revised pay fixation proceedings dated 12.11.2015 and quash the same and consequently direct the respondent to follow revised pay structure fixed on 10.02.2014.

For Petitioner : R.Murali

For Respondent : Mr.S.Arivalagan,
Standing Counsel,
for TANGEDCO.



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ORDER

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This Writ Petition has been filed for Writ of Certiorarified Mandamus to quash the impugned order dated 19.10.2015 and 12.11.2015 and consequently direct the respondent to follow revised pay structure fixed on 10.02.2014.

2. The brief facts as stated in the affidavit are that the petitioner was working as a Contract Labour under the respondent without any break. As per the order of Justice Khalid Commission dated 11.02.1991, the petitioner was absorbed in the post of Field Assistant in the year 1999 in the regular post with full time scale of pay. Along with the petitioner, more than 100 persons were regularized in Tuticorin Thermal Power Stations and a common order was passed by absorbing all the individuals. The petitioner's absorption is based on the prior experience and continuous work only. In the year 2000, the petitioner and others were ousted from service on the ground that they produced false educational certificates to gain the employment. Several Writ Petitions were filed by their Union and thereafter the Tamil Nadu Electricity Board issued a BP No.27 dated 07.11.2002, thereby, decided to cancel all the orders of dismissal / removal and all the persons including the petitioner and the said employees were taken back into service with continuity of service by imposing



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a minor punishment of “Reduction of pay to the post held on the date of imposing punishment for a period of three years which will operate for future increments”.

3. The contention of the petitioner is that by passing the above order the respondents have treated the break in service as service period for all other purposes and the same is categorically stated in B.P.No.27 dated 07.11.2002. As per the said B.P. proceedings after a period of three years from the year 2002, the increments were regularly paid to the petitioner. The common reinstatement order was issued to all the persons including petitioner.

4. In the year 2014, a wage revision settlement was arrived between the employees and TANGEDCO and the same is culminated into a wage Revision Proceedings No.3 dated 11.01.2014 and it was given effect from 01.12.2011. As per the Revised Pay Regulations 2011, under Regulation 3 which reads as under:

“(3) After fitment, a Service Weightage of one increment @ 3% of pay + Grade Pay shall be allowed to those who have completed 10 years of regular service as on 01.12.2011, which will count for normal increment.

(a) The Service Weightage of one increment shall also be allowed to those who are completing 10 years of completed



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regular service during the period between 01.12.2011 and 09.01.2014 (i.e., the date of settlement) which will count for normal increment, if they opt to come over to the revised pay on the date of completion of 10 years of service during the above said period. In such cases, they have to forego the arrears upto the date of revised pay fixation”.

5. As per the above regulation, the petitioner is entitled to additional 3% of Grade Pay on completion of 10 years of regular service as on 01.12.2011. The Board revised the petitioner's pay structure and granted the same by issuing a statement of fixation of pay through proceedings dated 10.02.2014. Accordingly, the basic pay and grade pay was revised and the next increment is fixed as 01.12.2014. However, the Internal Audit of the TANGEDCO had scrutinized the petitioner's pay Revision and arrived a conclusion that, the petitioner was not entitled to get 3% additional allowance for continuous 10 years service as on 01.12.2011 as per Wage Revision Settlement Proceedings No.3 and the basic pay and grade pay was revised and the next increment is fixed as 01.12.2014. The reason stated by the Audit is that “since there is break in service between 01.02.2000 to 09.07.2003 because of suspension of service from 01.02.2000 to 09.07.2003 period” and directed to revision the pay. Therefore, the respondent issued a communication intimating the recovery vide order dated 19.10.2015. The revised pay fixation was issued to the petitioner



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vide communication dated 12.11.2015 and served on the petitioner on 19.11.2015 with a specific direction to recover the excess pay and allowances.

In the revised pay Fixation, the petitioner increments were postponed and pay was reduced.

6. The contention of the petitioner is that the petitioner was not put on proper notice and the audit objections were not served to the petitioner. The respondent without properly considering the B.P.No.27 dated 07.11.2002, revised the pay fixation dated 12.11.2015 and has decided to recover a sum of Rs.13,560/- from the petitioner and reduced the pay without giving 3% additional increment for 10 years service as on 01.12.2011. Aggrieved over the same, the present Writ Petition is filed.

7. The respondent have filed a counter stating that the petitioner's suspension period from 01.02.2000 to 09.07.2003 was regularized with extraordinary leave without pay and allowance as follows:

“02.02.2000 to 08.07.2003 – 1253 days regularized as EOL without pay and allowance vide order Memo No. 05400-700/ADM.3(3)/2003-6, dated 20.12.2005”.



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As per Board's Memo.No.53005/C1/98-11 (S.B) dated 02.02.1999 and Memo/No.38722/A3/A31/2007-1(SB) dated 03.10.2007, it was clarified that the period of punishment of stoppage of increment with cumulative effect should be deducted from the total service along with the periods of leave or absence without pay allowances, without Medical Certificate for the purpose of allowing service weightage. While reviewing the wage revision fixation stated on 01.12.2011, it is seen that the service weightage increment has been fixed at 3% for increments and claimed from the above employee. Since this is not in order, a revised fixation was imposed. The petitioner was imposed reduction of pay to the minimum scale of pay of the Helper post for a period of three years which will operate for future increments and the suspension period is treated as EOL period without pay and allowances. The above three years period and EOL period should not be calculated for the purpose allowing “service weightage” as per the Board's order and is legally valid. Hence, the respondent prayed to dismiss the Writ Petition.

8. Heard R.Murali, learned counsel for the petitioner and Mr.S.Arivalagan, learned Standing Counsel appearing for TANGEDCO and perused the records.



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9. Perusal of the record reveals that the petitioner was originally working as Contract Labour and thereafter, the petitioner was taken into Board service as per the recommendation of Justice Khalid Commission. Thereafter, it was found that the petitioner has submitted false educational certificate. There are several similarly placed persons like that of the petitioner. The Learned Counsel appearing for the respondents submitted that thereafter, the Board considered the issue and passed B.P. No. 27 dated 07.11.2002 wherein, it was decided to impose a minor punishment of “Reduction of pay to the post held on the date of imposing punishment for a period of three years which will operate for future increments”. Moreover, the suspension period from 01.01.2000 to 09.07.2003 (1253 days) has been regularized as EOL without pay and allowance vide order dated 20.12.2005. The respondent further submitted that as per Board Memo. No.53005/C1/98-11 (S.B) dated 02.02.1999 and Memo/No.38722/A3/A31/2007-1(SB) dated 03.10.2007, the service weightage also cannot be taken into account.

10. After hearing the rival submission, this Court is of the considered opinion that the regularization of suspension period as “Extraordinary Leave on Loss of Pay” i.e. “EOL on loss of pay” means the petitioner is not entitled to any monetary benefits during that period. In other words, it is considered that



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the said period as “leave on loss of pay”, but the petitioner would be entitled to calculate the said period for granting service benefits. The impugned increment of 3% was granted by taking the 10 years of service as “Service Weightage”. Since the petitioner is not entitled to monetary benefits for the period of suspension. but the petitioner is entitled to service benefits for the period of suspension and this Court is of the considered opinion that the respondents have misconstrued the suspension period and denied the benefits.

11. Therefore, this Court holds the petitioner is entitled to service benefits, hence the impugned order is set aside and the respondents are directed to grant the increment of 3% by granting service weightage for the period of suspension also. It is submitted by the petitioner that inspite of interim order, the respondent recovered Rs.13,560/- (Rupees Thirteen Thousand and Five Hundred and Sixty only) from the petitioner. This Court directs the respondent to re-pay the same that is Rs.13,560/- (Rupees Thirteen Thousand and Five Hundred and Sixty only) to the petitioner. This order shall be implemented within a period of six (6) weeks from the day of receipt of the copy of the order.



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12. With the above direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

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Index : Yes / No
Internet : Yes/ No
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To
The Superintending Engineer,
Tuticorin Thermal Power Station,
(Procurement and Administration),
Tuticorin – 4.



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S.SRIMATHY, J.

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