



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.583 of 2015

and

M.P. (MD)Nos.1 to 3 of 2015

WEB COPY

S.Murugananda Bharathi

... Petitioner

vs.

1.The Chief Engineer/Personnel,
Tamil Nadu Generation and Distribution
Corporation Limited,
80/D, Anna Salai,
Chennai-2.

2.The Chief Engineer/Distribution,
Tamil Nadu Generation and Distribution
Corporation Limited,
Tirunelveli Region,
Tirunelveli.

3.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
Tirunelveli Electricity Distribution Circle,
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the orders of the third respondent, vide Memo No. /Adm.1/A2/F Audit/11, dated.10.02.2012 and Memo No.015465/459/Admn.1/A2/F.Audit/14, dated 20.10.2014, to quash the same.

For Petitioner : Mr.C.T.Perumal
For Respondents : Mr.Arivalagan

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorari, to quash the impugned orders of the third respondent, vide Memo No. /Adm.1/A2/F Audit/11, dated 10.02.2012 and Memo No.015465/459/Admn.1/A2/F.Audit/14, dated 20.10.2014..

2.The case of the petitioner is that he was working as Assistant Engineer in North Chennai Thermal Power Station and had availed an Extra Ordinary Leave (EOL) without salary for the purpose of an employment in Kuwait. The petitioner returned on 14.02.2006 and made a request to issue posting order to join duty. The first



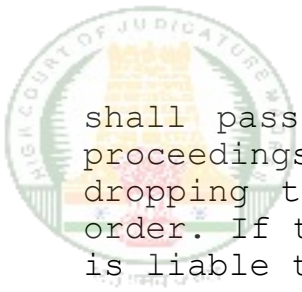
respondent issued a posting order on 27.02.2006, directing the petitioner to join duty as Assistant Executive Engineer. On promotion the second respondent issued reposting order on 08.03.2006, directing the petitioner to join in service as Assistant Executive Engineer, Tirunelveli/Rural, Distribution Circle. The petitioner joined on 10.03.2006. The third respondent issued a memo, dated 10.02.2012, revising the scale of pay. However, there is an audit objection, vide slip, dated 28.09.2011, raising that the petitioner is not entitled to any increment or revision of pay while he was on Extra Ordinary Leave without medical certificate. Hence, the recover order, dated 20.10.2014, was passed directing the petitioner to pay Rs.55,840/-.

3.The respondents have filed a counter affidavit stating that since the petitioner has taken Extra Ordinary Leave for his employment on Kuwait, the petitioner is not entitled to any pay revision during that period. Since the audit has given a slip objecting to the refixation of the pay and the recovery has been ordered.

4.Heard Mr.C.T.Perumal, learned Counsel appearing for the petitioner and Mr.Arivalagan, learned Standing Counsel appearing for the respondents.

5.The petitioner relied on memo Per.No.585/3/A31/2015-1, dated 13.01.2015, wherein, it is stated that audit branch shall conduct periodical inspection on the pay re-fixation made on wage revision, pay anomaly, selection Grade/ Special Grade, etc., before expiry of four years from the date of such fixation for recovery of cases within a limitation period of five years. Since the said claim is beyond the period of limitation prescribed in the said circular, the petitioner is claiming that the respondents are not empowered to recover the wrong fixation. However, the petitioner also submitted that the fixation is not wrong and he is entitled to the benefits, since the petitioner has exercised an option and then the Extra Ordinary Leave (EOL) was granted based on application.

6.On perusing the impugned order, it is seen that the respondents have specifically stated that the petitioner had not exercised any option. However, the petitioner's contention is that he had exercised an option. Moreover, the petitioner had submitted a detailed representation, dated 10.04.2012 and another representation, dated 30.10.2012, quoting all the provisions / circulars. Moreover, the contention of the petitioner is that before passing this impugned order, the respondents have not issued any show cause notice. Therefore, to meet the ends of justice, this Court is of the considered opinion that the two representations, dated 10.04.2012 and 30.10.2012, shall be considered by the respondents after giving adequate opportunity to the petitioner and thereafter, pass a speaking order. Until then, the impugned order is kept in abeyance. Thereafter, the respondents



shall pass a speaking order, if the respondents are dropping the proceedings, the same may be intimated, if the respondents are not dropping the proceedings, then, reasoning shall be stated in the order. If the respondents come to the conclusion that the petitioner is liable to refund, then affordable installments shall be granted.

7. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

Tmg

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

TO:

The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
Tirunelveli Electricity Distribution Circle,
Tirunelveli.

+1 CC to M/s.C.T.PERUMAL, Advocate (SR-1818[F] dated 20/01/2022)

+1 CC to M/s.S.ARIVALAGAN, Advocate (SR-2116[F] dated 21/01/2022)

W.P.(MD)No.583 of 2015

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TP (CO)

GC(16.02.2022) 3P 4C