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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2023

PRONOUNCED ON : 22.08.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No. 12702 of 2012

M.P.No. 1 of 2014

1.N.Duraisamy
2.M.Manimegalai
3.Antony Arulmarry
4.S.Venkatesan
5.S.Ravi
6.J.Kuppusami
7.N.Kumarasamy
8.Ramalingam
9.Pandiyan

... Petitioners

v.

1.The Chairman,
Tamil Nadu Electricity Board,
10th Floor, N.P.K.R.R.Maligai,
144, Annasalai,
Chennai 600 002.

2.The Chief Engineer / Personnel
Tamil Nadu Electricity Board,
8th Floor, N.P.K.R.R. Maligai,
144, Annasalai,



Chennai 600 002.

3. The Superintending Engineer,
Tamil Nadu Electricity Board,
Vellore Electricity Distribution Circle,
Gandhinagar,
Vellore 632 006.
4. The Executive Engineer (O & M)
Tamil Nadu Electricity Board,
Vellore 632 006.
5. The Executive Engineer (O & M),
Tamil Nadu Electricity Board,
Arakonam,
Vellore District.
6. The Executive Engineer (O & M),
Tamil Nadu Electricity Board,
Ranipet 632 401,
Vellore District.
7. The Executive Engineer (O & M),
Tamil Nadu Electricity Board,
Katpadi,
Vellore District.
8. The Executive Engineer (O & M),
Tamil Nadu Electricity Board,
Arcot 632 503,
Vellore District.
9. The Assistant Administrative Officer,
Central Office,
Tamil Nadu Electricity Board,
Vellore 632 006.



10.The Assistant Accounts Officer,
Central Office,
Tamil Nadu Electricity Board,
Vellore 632 006.

11.The Assistant Audit Officer / AP1
Board Office Audit Branch,
Tamil Nadu Electricity Board,
Vellore Region,
Vellore 632 006.

12.The Assistant Audit Officer / AP2
Board Office Audit Branch,
Tamil Nadu Electricity Board,
Vellore Region,
Vellore 632 006.

13.The Deputy Chief Internal Audit Officer,
Tamil Nadu Electricity Board,
Vellore Region,
Gandhi Nagar,
Vellore 632 006.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the records relating to (Per.) B.P.(CH) No.17 (Administrative Branch) dated 08.03.2010 issued by the respondents 1 & 2, Letter No.081999/1461/G.56/G.561/2007-3, dated 03.05.2010 and Letter No. 081999/1461/G.56/G.561/2007-4, dated 17.07.2010 issued by the 2nd respondent, quash the same and direct the respondents to restore the scale of pay the petitioners as already fixed and revised as per Regulation 33(b) of the Tamil Nadu Electricity Board Service



Regulations and (Per) B.P.Ms.(CH) No.184 (Administrative Branch) dated 28.06.2007.

For petitioners : Mr.P.Mani

For Respondents : Mr.K.Rajkumar
Standing counsel

ORDER

The writ petition is filed challenging B.P.(CH) No.17 (Administrative Branch) dated 08.03.2010, Letter No.081999/1461/G.56/G.561/2007-3 dated 03.05.2010 and Letter No. 081999/1461/G.56/G.561/2007-4, dated 17.07.2010 while praying that the respondents may be directed to restore the scale of pay in terms of pay fixation of Junior Assistant in terms of Regulation 33(b) of the Tamil Nadu Electricity Board Service Regulations and B.P.Ms.(CH) No.184 (Administrative Branch) dated 28.06.2007.

2. The petitioners 1, 4 to 9 were appointed as Office Helpers in terms of Regulation 106 of Tamil Nadu Electricity Board Service Regulations by the 3rd respondent vide proceedings dated 29.12.1998. The petitioners 2 and 3 were appointed as Office Helper (Trainee) for 1 year in terms of the proceeding of 4/12



the 3rd respondent dated 07.10.1998 and 28.01.1997 respectively. The petitioners 1 to 5 were promoted as Junior Assistant (Administration) in the time scale of Rs.3370-100-6370 in terms of the proceeding of the 3rd respondent dated 18.05.2007. The petitioners 6 to 7 were promoted as Junior Assistant (Accounts) in the time scale of Rs.3370-100-6370 in terms of the proceedings of the 3rd respondent dated 18.05.2007 and 22.08.2007 as well as the proceedings of the 2nd respondent dated 07.07.2007.

2.1. Subsequently, the petitioners 1, 2, 4 and 5 were promoted as Assistant (Administration) in the time scale of Rs.4200-7840 in terms of the proceeding of the 3rd respondent dated 16.08.2008. The petitioners 6 to 9 were appointed as Assistant (Accounts) to the pay scale of Rs.5400-20200 + GP 2700 in terms of the proceeding of the 3rd respondent dated 30.03.2010. The 1st and 2nd respondents issued B.P.Ms.(CH) No.184 (Administrative Branch) dated 28.07.2007 appointing 132 Junior Assistants / Accounts by recruitment from Class IV employees (i.e.,) Record Clerks and Office Helpers which included the petitioner. The above B.P.Ms.(CH) No.184 (Administrative Branch) further provided with the pay fixation in the post of Junior Assistant would be



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in terms of Regulation 33(b) of the Tamil Nadu Electricity Board Service Regulation since the post of Junior Assistant carries higher duties and responsibilities than the Record Clerk and Office Helper.

2.2. Thereafter, the 3rd respondent issued the appointment order appointing the petitioners as Junior Assistant (Accounts) and their salaries were fixed by following regulation 33(b) of the Tamil Nadu Electricity Board Service Regulation at Rs.4770/- in the time scale of Rs.3370-100-6370. Subsequently, their scale of pay were revised and they were also promoted as Assistants. After about 3 years, the 1st and 2nd respondents issued the impugned B.P.(CH) No.17 (Administrative Branch) dated 08.03.2010 stating that the pay of Junior Assistants / Administration and Accounts recruited from Record Clerk and Office Helpers should be fixed in terms of B.P.Ms.(FB) No.95, dated 20.11.1985 and the fixation of pay in terms of B.P.(CH) No.152, Administrative Branch, dated 05.05.2007 and fixation of pay in terms of B.P.(CH) No.184, Administrative Branch, dated 28.06.2007 was withdrawn. Pursuant thereto, the impugned proceedings dated 03.05.2010 and 17.07.2010 were issued to revise and to fix the pay in terms of B.P.Ms.(FB) No.95, dated



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3. It is submitted by the learned counsel for the petitioners that identical issue stands decided by this Court in W.P.No.25240 of 2010 dated 16.10.2012 wherein it was held as under:

“7. There is no dispute that the first petitioner was given the pay scale on the basis of the Board proceedings dated 5 May 2007 and 28 June 2007. The first petitioner was not responsible for fixing the pay scale. He was appointed to the post of Junior Assistant / Administration by recruitment from Class Iv to Class III service. The appointment was pursuant to a Board proceeding. While fixing the pay, the Board treated the first petitioner as a promotee and wrongly given the pay scale applicable to a promotee officer. The first petitioner was given the benefits of the said pay scale up to September 2010. The first petitioner has no case that he is entitled to the salary applicable to a promotee. Therefore, the impugned Board proceeding is not liable to be set aside. Accordingly, the prayer to quash the impugned proceeding is rejected.

8. The other question relates to recovery of the amount already paid to the first petitioner.

9. The Supreme Court in Purushotham Lal Das and others v. State of Bihar and others, 2006 (11) SCC 492, by following the earlier judgment in Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18, observed that in case payments were made without the employee making



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a representation or misrepresentation, it is not open to the employer to deduct or recover the excess amount paid at an earlier point of time.

10. The first petitioner was not in any way responsible for fixing the pay. It was an action taken by the respondents to fix his salary. The first petitioner has accepted the pay given to him by the respondents. The respondents have no case that the first petitioner misrepresented the facts and claimed a higher scale of pay. The counter affidavit filed by the second respondent gives a clear indication that the pay was wrongly fixed, by the officials. When it is made out that the pay was wrongly fixed without the intervention of the first petitioner, it is not open to the respondents to recover the excess amount. The respondents are therefore restrained from the impugned Board proceedings (Per) B.P.(CH) No.17 (Administrative Branch) dated 8 March 2010. In case the excess amount has already been recovered, necessarily, it should be refunded to the first petitioner forthwith.

(emphasis supplied)

4. The learned counsel for the respondents would submit that the writ appeal has been filed challenging the above writ petition. However, despite repeated queries as to the status of the writ appeal, no response was forthcoming. Hence, this Court is inclined to follow the above order of the learned Single Judge in W.P.No.25240 of 2010 dated 16.10.2012. In view of the same, the writ petition stands disposed of in terms of the W.P.No.25240 of



2010 dated 16.10.2012. No costs. Consequently, connected miscellaneous

petition is closed.

22.08.2023

Index: Yes/No

Internet: Yes/No

Speaking order / Non Speaking order
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To

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MOHAMMED SHAFFIQ,J

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W.P.No.12702 of 2012
and
M.P.No. 1 of 2014

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