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Writ Petition No.12577 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.11.2023

Pronounced on : 14.12.2023

CORAM

THE HONOURABLE DR.JUSTICE D.NAGARJUN

Writ Petition No.12577 of 2013
and M.P.Nos.1 & 2 of 2013

B.Moorthy

... Petitioner

Vs

1.Tamilnadu Generation and Distribution Corporation Ltd.,
Represented by its Chief Engineering
(Personnel)
No.144, Anna Salai,
Chennai-600 002.

2.The Superintending Engineer,
Generation Circle-Kundah,
Kundah Bridge Post,
Nilgiris-643 219.

... Respondents

Prayer: Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st respondent dated 20.02.2013 in Letter No.105594/1089/G.34/G342/2012-2 and the order dated 19.03.2013 passed by the 2nd respondent in Memo No.003768/166/Ni.Pi.1/Ni.Vu./Ko.Thani/2013 and served on the petitioner on 05.04.2013, quash the same and consequently direct the respondents not



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to cancel the selection grade benefits given to him from 14.07.2001 and also to grant him the special grade benefits with effect from 15.07.2012 with arrears and consequential benefits, award costs and thus render justice.

For Petitioner : M/s.V.Porkodi
for Mr.R.Krishnaswamy
For Respondents : Mr.David Sundar Singh

ORDER

This Writ Petition is filed seeking for Certiorarified Mandamus is filed to quash the orders passed by the first respondent 20.02.2013 in Letter No.105594 /1089/G.34/G342/2012-2 and the order dated 19.03.2013 passed by the second respondent in Memo No.003768/166/Ni.Pi.1/Ni.Vu./Ko/Thani/2013 and direct the respondents not to cancel the selection grade benefits given to him from 14.07.2001 and also to grant him the special grade benefits with effect from 15.07.2012. with arrears.

2. The facts in brief as per the affidavit enclosed in this Writ Petition are as under: The petitioner joined the service of erstwhile Tamilnadu Electricity Board as Officer Helper on 12.04.1982 and he was promoted as Record Clerk with effect from 16.07.1992. Prior to petitioner joining the



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service, B.P.Ms.No.288 (SB), were passed on 03.12.1979 for conferment of selection grade on completion of 10 years of service in ordinary grade and special grade on completion of 10 years of service in selection grade or 20 years of service in ordinary grade. This order was came into effect from 01.01.1979. As per B.P.(Full Board) No.58 (SB) dated 15.07.1998, the period of 10 years fixed for movement from ordinary grade to selection grade was reduced to 9 years. The petitioner was given selection grade in the post of Record Clerk with effect from 14.07.2001 and his basic pay was fixed at Rs.5470/- and he was allowed to next increment with effect from 01.10.2002.

3. As per the settlement between the unions and the board which came into effect from 01.12.2002, the board issued (Per) B.P.(FB) No.11 dated 08.02.2006 and notified the selection grade pay with effect from 01.12.2002 for various categories including the post of Record Clerk. Board has also issued another (Per) B.P.(FB).No.12, Secretariat Branch, 08.02.2006 by giving both the selection grade scale of pay and special grade scale of pay for both the employees working under Regular Work Establishment and Provincial Cadre.



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4. A new settlement was signed between the board and the union on 18.11.2009 giving wage revision with effect from 01.12.2007. As per the said settlement and consequential (Per) B.P.(Ch)No.223 dated 21.11.2009 by order dated 21.12.2009, the basic/band pay was revised to 13,730 as on 01.12.2007 and the petitioner was made eligible to get a grade pay of Rs.2500 with effect from 01.12.2007. Under Clause 7 of the said B.P., the Board has dispensed with the scheme and grant of special grade and contemplated that the employees who have completed 10 years of service in the selection grade and who have completed 20 years of service in the original/ordinary post shall be moved to special grade and those who moved to special grade on or after 01.12.2007 shall be given the benefit of one increment equal to 3% of the band pay + grade pay from the date on which they moved to special grade.

5. The petitioner completed 20 years of service in the post of Record Clerk by 14.07.2012 and more than 10 years of service in the post of selection grade/Record Clerk, thereby is entitled to one increment at the rate of 3% of his basic pay and grade pay on 14.07.2012 towards the benefit of moving to special grade in the post of Record Clerk. However the petitioner was not given the benefit of the special grade from the date of moving to the



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said special grade, that is, from 15.07.2012.

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6. The petitioner has submitted representation to the second respondent on 21.11.2012. The second respondent sought for clarification from the first respondent, accordingly the first respondent called particulars with regard to the petitioner's service by way of letter dated 07.12.2012. Second respondent by way of letter dated 19.12.2012 addressed the first respondent recommending to grant the petitioner, the benefits of the special grade with effect from 15.07.2012. However the first respondent passed the impugned order dated 20.02.2013 by way of Letter No.105594/1089/G.34/G342/2012-2, refusing to grant and confer him special grade. Further, the first respondent has directed the second respondent to cancel the selection grade given to the petitioner with effect from 30.09.2006 stating that it is was wrongly given to the petitioner. The second respondent has issued a consequential impugned order dated 13.03.2013 in Memo No.003768/166/Ni.Pi.1/Ni.Vu./Ko.Thani/2013 and informed to the petitioner that he could not be granted special grade benefits as claimed by the petitioner's representation dated 21.11.2012. The second respondent has also cancelled and withdrawn the selection grade given to the petitioner with effect from 14.07.2001 and ordered for re-fixation of his pay



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from 01.10.2010 and reduced his pay as on 01.10.2012 from Rs.16,340 + 2500 to Rs.15970 + 2200. The second respondent has also ordered for recovery of excess payment made to the petitioner from 14.07.2001. Aggrieved by the same, the petitioner has filed the instant Writ Petition.

7. The respondents have filed counter affidavit stating that grant of selection grade on completion of 10 years of service in the same scale of pay has been introduced with effect from 01.01.1979 vide BP (MS) No.288 (Secretariat Branch) dated 03.12.1979. As per the said proceedings, it was ordered that the scale of pay applicable to the next higher category in the line of promotion shall be allowed as selection grade scale of pay. In cases where there is no higher category in the line of promotion for any post, no selection grade scale of pay shall be allowed. However, in the Board's Memorandum No.58071-R1/80-5 dated 14.07.1982, it was clarified that the purpose of movement to selection grade along with service in the present System/ Circle/ Office, the services rendered in former System/ Circle/ Office in the same time scale shall also be taken into account provided such service is taken into account for the purpose of fixation of seniority for promotion in the present System/Circle/Office.



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8. It is mentioned further in the counter affidavit that the petitioner is governed by standing orders for workmen engaged in clerical departments of the TNEB and as per the S.O.17 of the said standing orders the seniority of the employees like the petitioners are maintained within the sytem/Circle. However, the petitioner on his own request got transferred to various System/Circles and as such his seniority in those transferred circles was fixed in the last rank as he had foregone his seniority in the previous circles, thereby applying the clarification issued in the above referred Memo, dated 14.07.1982, the petitioner was not entitled to selection grade on 14.07.2001.

9. It further mentioned in the counter affidavit that the petitioner has transferred to Nilgiris Electricity Distribution Circle on his own request with an undertaking to relinquish all his rights in the present circle of Kundah Generation Circle where he was working. The petitioner has relinquished his two years of service rendered at Kundah Generation Circle. Further, the petitioner was also transferred to Pykara Ultimate Stage Hydro Electric Project, Masinagudi on his own request with an undertaking to relinquish his services rendered at Nilgiris Electricity Distribution Circle, Ooty. Subsequently, the petitioner was migrated from Pykara Ultimate Stage Hydro Electric Project Masinagudi to Dharmapuri Electricity Distribution



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Circle, Dharmapuri and then Dharmapuri Electricity Distribution Circle, Dharmapuri to Kundah Generation Circle, Kundah with the same undertakings to relinquish his rights by forgoing his seniority in the previous stations.

10. The petitioner has completed only six years of service in the present station of Kundah Generation Circle/Kundah, thereby not entitled to either selection grade or special grade as per the clarificatory orders issued in the memorandum No.58071 R1/ 80-5 dated 14.07.1982. Therefore, the petitioner is not entitled to move to selection grade as he has not completed nine years of service.

11. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and carefully perused the materials placed on record.

12. Learned counsel for the petitioner has submitted that the orders of the respondents are arbitrary and violation of Article 14 of the Constitution of India as the request of the petitioner to grant special grade has been



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rejected without any speaking orders and that the petitioner is entitled to one increment at the rate of 3% of his basic pay and grade pay as on 14.07.2012. The clarification issued in (Per) CMD TANGEDCO Proceedings No.49 dated 08.03.2012, is not applicable to the employees who are eligible to get selection grade and special grade and who have no actual avenue of promotion. It is also submitted that there is no promotional avenue for the post of Record Clerk and one has to work only as Record Clerk in nay circle either in the original circle or in the transferred circle, thereby transferring from one circle to another circle even on the request of the petitioner will not in any way dis-entitle the petitioner for grant of special grade and selection grade. It is also submitted further that the petitioner should be considered on pay with the Junior Assistants/ Clerks / Typists/ Steno-Typists, etc and ought to have granted special grade benefits. It is also submitted that the impugned order will lead into recovery of huge amounts around Rs.1.5 lakh, thereby will result in serious consequences and that will also affect his terminal benefits.

13. Learned counsel for the respondent submits that the post of Record Clerk is only a Circle post and in case if the petitioner is transferred from one Circle to other Circle at his request he will lose his seniority and



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according to petitioner has lost service having changed many Circles and by giving of selection grade is irregular and he is not entitle for selection grade or any other grade basing on his seniority. Learned counsel submitted that the selection grade and special grade will be granted increment will be granted basing on the seniority only and his seniority the petitioner is put up only six years of service in the circle where he is working at present as on the date of filing of the writ petition and thereby he was not entitled for selection grade.

14. There is no dispute that the petitioner who was appointed as Record Clerk was transferred to Nilgiris Electricity Distribution Circle on his own request with an undertaking to relinquish all his rights in the present circle of Kundah Generation Circle. The petitioner has relinquished his two years of service rendered at Kundah Generation Circle. Further, the petitioner was also transferred to Pykara Ultimate Stage Hydro Electric Project, Masinagudi on his own request with an undertaking to relinquish his service rendered at Nilgiris Electricity Distribution Circle, Ooty. Subsequently, the petitioner was migrated from Pykara Ultimate Stage Hydro Electric Project Masinagudi to Dharmapuri Electricity Distribution Circle, Dharmapuri and then Dharmapuri Electricity Distribution Circle,



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Dharmapuri to Kundah Generation Circle, Kundah. In all the above mentioned transfers, petitioner was transferred only on his request by giving an undertaking that he would take the bottom place in the seniority in the circle to which he been transferred and also given undertaking that he will forego the seniority in the circle where he was working previously. Thereby in all the circles where he worked previously, he has lost the seniority and in the circle in Kundha Generation Circle at Kundha, the petitioner has got six years of service. Earlier learned counsel for the petitioner pointed out the clarification issued.

15. The petitioner has cited the Board proceedings No.288 (Sectt. Branch) dated 03.12.1979, wherein at para 3A it is held that

“3(a) A person holding a post in the categories carrying the following pre-revised scale of pay existing in the Bcard shall be allowed move to selection grade on completion of 10 years of satisfactory service in the order cadre:-

Pre-revised scale of pay	Revised scale of pay
1) 210-4-230-5-270-70305	1)300-5-325-10-375-15-435
2) 225-5-250-6-292-8-340	2)355-10-375-15-480-20-600
3) 260-8-300-10-350-12-410	3) 390-15-480-20-600-25-650



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- 4) 265-10-315-12-375-15-465 4) 425-20-525-25-650-30-770
5) 285-10-335-12-395315-470 5) 500-25-600-30-720-35-790
6) 305-12-365-15-440-17-525 6) 580-30-720-35-875-40-995
7) 315-15-390-18-480-20-600 7) 650-35-720-40-800-50-1000-60-1180
8) 350-15-425-18-515-20-615 8) 680-40-800-50-1000-60-1180
9) 375-20-475-30-685 9) 800-50-1000-60-1240-65-1305
10) 395-20-475-30-715
11) 415-20-475-30-715
12) 440-30-620-35-935
13) 520-30-640-35-955
14) 470-30-620-40-980
15) 475-30-625-40-825-50-1025
16) 565-30-625-40-825-50-1025
17) 600-40-800-50-1200

The scale of pay applicable to such selection grades shall be as mentioned below:-

i) Wherever special grade or selection grade posts are existing at present from any category, the scale of pay applicable to such special grade or selection grade posts shall be allowed as selection grade scale of pay



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with reference to the orders in these proceedings.

ii) In other cases (upto the level of the employees carrying the scales of pay mentioned above only), the scales of pay applicable to the next higher category in the line of promotion shall be allowed as selection grade scale of line of promotion for any post, no selection grade scale of pay shall be allowed. Adopting the above principles, the holdders of the posts in the categories mentioned in column (1) of the Annexure to these proceedings shall have the scales of pay f the categories indicated in the corresponding entry in Column (2) thereof, as Selection grade Scales of pay.”

16. A person holding a post in the categories carrying the following pre revised/ revised scale of pay existing in the Board shall be allowed move to selection grade on completion of 10 years of satisfactory service in the Ordinary Grade. Learned counsel also cited proceedings dated 02.08.2001, Memo.No.0785/649/Admi.I/A.I/2001 of Superintending Engineer Civil, Masinagudi, the petitioner was appointed as selection grade Record Clerk



with effect from 14.07.2001 by fixing the pay at Rs.5470/-. The other important proceedings cited by the counsel for the petitioner is the proceedings dated 08.03.2012 of TamilNadu Generation and Distribution Corporation Limited, Secretariat Branch (Per)CMD TANGEDCO Proceedings No.49, wherein at Para Nos.4 & 5 it is mentioned as under:

“4. It has been represented that Junior Assistant /Assessor, Typist and Steno-Typists are State -wide cadre and they are being given promotion by taking into account of State-wide seniority and hence the service rendered in former system(s)/ circle(a) may by counter along with the service in the present system/circle, while reckoning the period for the purpose of movement to Section Grade/Special Grade. The points raised have been examined in detail.

5. After careful consideration it is hereby ordered that for the purpose of movement to Selection Grade/Special Grade, the service rendered in former system (s)/Circle(s) shall also be taken into account along with the service in the present system/circle for the Junior Assistant/ Assessor/ Typist/ Steno-Typist since they are promoted to the next higher post taking into account the State seniority. This will not be made applicable to the employees transferred to the offices like Secretariat Branch, Administrative Branch and



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Audit Branch etc., where separate seniority is maintained.”

The proceedings referred above are applicable to the cadres the of Junior Assistants/ Clerks / Typists/ Steno-Typists, etc and not to the petitioner who has been working as Record Clerk.

17. Finally learned counsel for the petitioner has cited one more letter dated 19.12.2012 addressed by Superintending Engineer, Generation Circle, Kundha to the Chief Engineer person, wherein it is mentioned that the petitioner belongs to provincial cadre and in their establishment, transfer are dealt with by the office of Chief of Engineer, Personnel Chennai. By saying so the Superintend Engineer has recommended to provide the benefit of movement to selection grade and special grade to the non promotional cadre like Record Clerk so as to boost them to serve for remaining period.

18. This Court has carefully gone through the letter of the Superintend Engineer, Kundha, it is seen that it is a only a letter of recommendation. The Superintend Engineer has no authority to grant selection grade or special grade. While addressing this letter itself it is clear that the petitioner is not entitled for the election grade or special grade, however the Superintend



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Engineer has requested the Chief Engineer to consider extending the Record Clerks also to which cadre the petitioner belongs. By relying on this letter, learned counsel for the petitioner has submitted vehemently that since the Superintend Engineer has mentioned that the petitioner service ie Record Clerk also belongs to provincial cadre, the petitioner service will not loose the service even though he has been transferred to various circles.

19. However, this argument can be negated as per the Board memorandum No.58071/R1/80-5 dated 14.07.1982 wherein it was clarified that for the purpose of movement to selection grade along with service in the present circle, the services rendered in the former circle in the same time scale shall also be taken into account provided such service is taken into account for the purpose of fixation of seniority for the promotion in the present circle. Therefore by applying the memorandum dated 14.07.1982, the petitioner's service in the present circle alone where he has worked alone can be taken into consideration. Thereby, the petitioner is not entitled for Special grade and Selection grade.

20. Considering the above, the first respondent has passed orders dated 20.02.2013 vide Letter No.105594/1089/G.34/G.342/2012-2, and the



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second respondent has consequently passed another orders dated 19.03.2013 in Memo No.003768/166/Ni.Pi.1/Ni.Vu/Ko.Thani/2013, dated 19.03.2013 which was served on 05.04.2013 cancelling the selection grade and also reducing and ordered for excess amount. Once it is found that the petitioner was granted selection grade erroneously, he shall not allowed to be continued. Thereby, the proceeding of the first and second respondents cancelling the selection grade to the petitioner with effect from 30.09.2006 cannot be intervened. Consequently reducing the pay of the petitioner after cancelling the selection grade also cannot be intervened.

21. However, insofar as recovery of the excess amount paid is concerned, this Court is of the view, that since the petitioner has worked as employee who was granted selection grade, the payment of excess money cannot be recovered, as it causes lot of hardship to the petitioner. Further it is to be noted the respondent department should have been vigilant while considering the application of the petitioner for grant selection grade. Had the concerned officer was vigilant the selection grade would not have been passed in favour of the petitioner. Therefore, for the mistake committed by the officer of the respondent, the petitioner who was benefited monetarily for these years cannot be asked to repay it. Therefore, while confirming the



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orders passed by the respondent in respect of cancelling of special grade, reducing the pay of the petitioner, this Court is inclined to set aside the orders of respondent which directs for recovery of excess amount paid to the petitioner.

22. In view of the above, this Writ Petition is disposed of in part by confirming the Proceedings in Letter No.105594/1089/Je34/201202 dated 20.02.2013 of the Chief Engineer (Personnel), Tamilnadu Generation and Distribution Corporation Limited, however the Memo dated 19.03.2013 vide Memo.No.003768/166/Ni.Pi.1/Ni.Vu/Ni.u/Ko.Thani/2013, of the Superintendent Engineer, Hydro Power Generation Circle, Kundah, Tamilnadu Generation and Distribution Corporation Ltd issued recovery of excess salary is hereby set aside. No costs.

14.12.2023

Speaking (or) Non Speaking Order

Index : Yes/ No

Internet : Yes

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To

1.Tamilnadu Generation and Distribution Corporation Ltd.,
Represented by its Chief Engineering
(Personnel)



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2.The Superintending Engineer,
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Dr.D.NAGARJUN, J.

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