



WEB COPY

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.Nos.14026 of 2010
and M.P.No.1 of 2010

K.Ambika Boopathy

... Petitioner

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,
Karur Electricity Distribution Circle,
Kovai Road,
Karur 639 002.



4.The Executive Engineer,
O & M / Urban / Karur,
Tamil Nadu Electricity Board,
TNEB Complex, Kovai Road,
Karur 639 002.

5.The Assistant Accounts Officer,
Revenue Branch / Urban,
Tamil Nadu Electricity Board,
TNEB Complex, Kovai Road,
Karur 639 002.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari 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 issued by the 2nd respondent and the Memo No.80/Adm/A1/2010-1, dated 14.05.2010 issued by the 4th respondent and quash the same.

For petitioner	: 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 the Memo No.80/Adm/A1/2010-1 dated 14.05.2010.



WEB

2.The petitioner was originally appointed as Office Helper Trainee in the office of the 3rd respondent on 06.11.1998. On completion of training was made permanent in the post of Office Helper on 06.11.1999. 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 that the pay fixation in the post of Junior Assistant would be governed 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.

2.1. The petitioner was allotted to Chief Internal Audit Officer / Board Office Audit Branch and the appointment order dated 24.07.2007 was issued appointing the petitioner as Junior Auditor and he was posted in the office of Deputy Chief Internal Audit Officer, Trichy Region. The allotment order was modified and the petitioner was re-allotted to Karur Electricity Distribution Circle in terms of the proceeding of the 2nd respondent dated 10.10.2007.



WEB COURT

Thereafter, the 3rd respondent issued the appointment order appointing the petitioner as Junior Assistant (Accounts) in the office of the 4th respondent and his salary was fixed in terms of Regulation 33(b) of the Tamil Nadu Electricity Board Service Regulation at Rs.4770/- in the time scale of Rs.3370-100-6370 with effect from 22.10.2007 in terms of the proceedings dated 27.12.2007. Subsequently, the pay was revised in terms of B.P.(CH).No.223(SB) dated 21.11.2009. After about 2 ½ years, the 1st and 2nd respondents issued 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.

2.2. Pursuant thereto, the impugned proceeding dated 03.05.2010 was issued stating that for fixation of pay, the orders issued in B.P.Ms.(FB) No.95, dated 20.11.1985 would govern employees who have been appointed as Junior



Assistant / Administration and Accounts from the cadre of Record Clerks and Office Helpers with effect from 05.05.2007 and their pay already fixed in terms of B.P.(CH) No.152, Administrative Branch, dated 05.05.2007 and B.P.(CH) No.184, Administrative Branch, dated 28.06.2007 shall be revised. Thereafter, the impugned proceeding dated 14.05.2010 was issued revising the pay in terms of B.P.Ms.(FB) No.95, dated 20.11.1985 while also seeking to recover the excess payment in 10 monthly instalments.

3. It is submitted by the learned counsel for the petitioner 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.



WEB COPY

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 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)



WEB COPY

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

shk



WEB COPY

MOHAMMED SHAFFIQ,J

shk

To

- 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,
Karur Electricity Distribution Circle,
Kovai Road,
Karur 639 002.
- 4.The Executive Engineer,
O & M / Urban / Karur,
Tamil Nadu Electricity Board,
TNEB Complex, Kovai Road,
Karur 639 002.
- 5.The Assistant Accounts Officer,
Revenue Branch / Urban,
Tamil Nadu Electricity Board,
TNEB Complex, Kovai Road,
Karur 639 002.

W.P.Nos.14026 of 2010
and M.P.No.1 of 2010

22.08.2023