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W.P.No.29416 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

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THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.29416 of 2011
and M.P.Nos.1 of 2011 & 1 of 2012

S. YUVARAJ

... Petitioner

Vs.

1. THE CHAIRMAN
TAMILNADU GENERATION AND DISTRIBUTION CORPORATION LTD.,
(TANGEDCO), 144 ANNA SALAI, CHENNAI 2.

2. THE SECRETARY
TAMILNADU GENERATION AND DISTRIBUTION CORPORATION LTD.,
(TANGEDCO), 144 ANNA SALAI, CHENNAI 2.

3. THE CHIEF ENGINEER (PERSONNEL)
TAMILNADU GENERATION AND DISTRIBUTION CORPORATION LTD.,
(TANGEDCO), 144 ANNA SALAI, CHENNAI 2.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent order bearing ref. No. Memo. (per) No. 65031/A22/A222/11-1, dated 30.08.2011 and the order of the 3rd respondent office order bearing ref. Office Order No.1030 (Admn. Branch) dated 30.08.2011 and quash the same and pass consequential order restoring the petitioner to the post of Sports



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Officer with effect from 30.8.2011, the day 1 was reverted as Assistant and pay all arrears and other benefits and award costs.

For Petitioner : Mr.V.Stalin

For Respondents : Mr.K.Rajkumar
Standing counsel for TANGEDCO

ORDER

This Writ Petition is filed challenging the order of the second respondent dated 30.08.2011, by which the Writ Petitioner, who was serving in the post of Sports Officer was reverted back to his original post of Assistant.

2.The brief facts leading to filing of this Writ Petition is that, the petitioner is a meritorious Sports person. While so, by an order dated 26.02.2011 an ex-cadre post of Sports Officer, in the scale of pay of Rs.15,700-39,100/- + GP Rs.5,400/- was sanctioned, for a period of one year by abolishing two posts of Assistants in the administrative branch. After the said sanction, by an order dated 26.02.2011, the petitioner was temporarily appointed in the newly created ex-cadre post. When the petitioner was so



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working, by the Order impugned in this Writ Petition dated 30.08.2011, he was reverted to his original post of Assistant, in the administrative branch. At the time of admission of this Writ Petition, an interim order was granted so as to protect his pay. Pursuant thereto, pay of the petitioner was protected. However, he was reverted as Assistant with the pay protection and thereafter pending the Writ Petition, he was also further promoted as Superintendent.

3.The learned counsel appearing on behalf of the petitioner would contend that when the appointment of the petitioner is cancelled and he is reverted back to the lower post, it certainly visits the petitioner with civil consequences as he is sent to the post, which carries lower scale of pay and a new designation, new kinds of duties were granted to him. In that view of the matter, the respondents ought not to have passed the impugned Order, without affording opportunity to the petitioner. Therefore, he would pray that even though his pay was protected, subsequently promoted, the impugned order shall be quashed. Even if the respondents wants to contend that the post has been abolished, they can do so only by giving an opportunity to the petitioner and hear him in respect thereof.



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4.Per contra, the learned counsel appearing for the respondents – Corporation would submit that the post itself was temporarily created and was not a permanent one. By proceedings No.39, (SB) dated 26.02.2011, the very creation of the post was reviewed and it was decided to discontinue and abolish the post. Pursuant thereof by the order impugned, the petitioner was reverted. The appointment of the petitioner was temporary in nature under Regulation 106 (a) (i) of the TNEB Services Regulations (in short 'the Regulations'). As per Section 106 (d) of the Regulations, the services of the persons appointed temporarily in such posts are liable to be terminated at any point of time without notice and without any reason being assigned. In view thereof, no opportunity need be given to the petitioner.

5.I have considered the rival submissions made by the learned counsel on either side and perused the material records of the case.

6.Firstly, to consider the contention of the learned counsel appearing on behalf of the petitioner that the show cause notice need to be given, it must be seen that the Order appointing the petitioner is under 106 (a) (i) of the



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Regulations. The appointment order categorically states that it is temporary in nature. The post in which the petitioner was appointed is ex-cadre post, which was created initially for a period of one year only. The respondent – Corporation in its wisdom abolished the post. The petitioner had no right to claim the said post. He substantially held the post of Assistant only. Therefore, reversion from a temporary appointment granted to an ex-cadre post cannot be held bad for non-issue of show cause notice, especially in view of the Section 106 (d) of the Regulations. However, at the same time, it can be seen that, while reverting the petitioner from the said post, this Court by an interim order protected the right of the petitioner and subsequently thereafter he would also further promoted to the post of Superintendent and his pay has been fixed, by taking into account the protected pay. The counter affidavit does not throw any light regarding the said aspect. But, it may be seen that it was only the adventure of the respondent-Corporation in creating such post and thereafter abolishing it. The petitioner cannot be said to be under fault for the entire exercise. Therefore, the pay which was originally granted to the petitioner while working or even after the reversion, until his time of promotion has not been re-fixed or recovered. The scale of pay of Superintendent post based on



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its erstwhile pay drawn, by virtue of the interim order of this Court, shall not also be re-fixed or downgraded to the detriment of the petitioner.

7. Therefore, this Writ Petition is disposed of, on the following terms:

(i) The impugned order dated 30.08.2011 is upheld;

(ii) However, the reversion of the petitioner to the original post shall not result in lowering of his pay and the pay protection granted till date of his promotion and the consequent re-fixation of pay in the promoted post shall stand.

No costs. Consequently connected miscellaneous petitions are closed.

28.11.2023

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Index: Yes

Speaking Order: Yes

Neutral Citation: Yes



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