



WP.No.51 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.51 of 2017

K.Arivazhagan

... Petitioner

Versus

**1.The Chairman,
Tamil Nadu Electricity Board,
Tamil Nadu Generation and Electricity,
Distribution Corporation Limited,
Anna Salai, Chennai – 600 002.**

**2.The Chief Engineer/Personnel,
Tamil Nadu Electricity Board,
Tamil Nadu Generation and Electricity
Distribution Corporation Limited,
Anna Salai, Chennai – 600 002.**

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 2nd respondent in his Memo.No.035654/G.17/G.171/2015, dated 20.06.2016 and quash the same and consequently direct the respondents to accept the petitioner's revised option for fixation of the revised payscales with effect



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from 30.03.1994.

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For Petitioner	:	Mr.Vijayan Subramanian
For Respondents	:	Mr.K.Raj Kumar (Standing Counsel for TANGEDCO)

ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking records relating to the order passed by the 2nd respondent, Chief Engineer / Personnel, Tamil Nadu Electricity Board, Tamil Nadu Generation and Electricity Distribution Corporation Limited [TANGEDCO], Chennai in Memo No.035654/G.17/G171/2015 dated 20.06.2016 and to quash the same and to direct the respondents to accept the revised option of the petitioner for fixation of revised pay scale with effect from 30.03.1994.
- (2) The petitioner had been originally appointed as Technical Assistant in the respondent Corporation/Board on 07.12.1987. After he had obtained B.E.Degree, he was selected as Assistant Engineer by an



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internal selection and joined duty as Assistant Engineer on 30.03.1994. He was then promoted as Assistant Executive Engineer on 13.02.2006. At the time when the writ petition was filed, he was working as Assistant Executive Engineer under the control of Superintending Engineer, Chennai North. He was however, also under suspension at the time of filing of the writ petition.

- (3) He was under suspension at the time of filing of writ petition consequent to an FIR registered against him in Crime No.08/AC/2011/CC-1 under Sections 7 and 13[2] read with 13[1][d] of the Prevention of Corruption Act, 1989 for alleged receipt of bribe amount.
- (4) The petitioner claimed that the respondents, by a Board Proceedings in BP [FB] No.6[SB] dated 07.01.1995, had given an option to the employees, particularly those who were in service as Assistant Engineers and had been so selected by internal selection as on 30.03.1994, to get revised pay scale. The petitioner was eligible to exercise such option. Such option would come into effect from 1992, on the date of joining in the officers' cadre. However, there was a



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rider and a caveat placed by the respondents that the employees should exercise such option within a period of two months.

- (5) It is the specific case of the petitioner herein that the petitioner was not served with any notice of such offer made by the respondents and therefore, he had not exercised that particular option. On the other hand, during argument, a parallel relief was sought to be placed equal to another employee who joined the service on 16.12.1985 and who had exercised such option within a period of two months, therefore, is benefited by drawing a higher scale of pay. Seeking that there must be relaxation of the said two months within which such option should be exercised, the petitioner had given a representation on 03.04.2015. The Impugned Order came to be passed on 20.06.2016 rejecting the request made by the petitioner herein.
- (6) In the Impugned Order, the respondents had very specifically stated that if such permission is granted to the petitioner who had not exercised that particular option within the stipulated period of two months, it would open flood gates to other employees also who had not exercised that particular option. It had also been stated that his



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request for permitting revised option for 1992 Wage Revision had already been rejected and had already been informed by a Board Memo dated 23.09.2010. The petitioner had not questioned that particular order dated 23.09.2010, but had given a subsequent representation after about six years on 09.06.2016 and the Impugned Order which came to be passed on 20.06.2016, had been questioned by him in the present writ petition.

- (7) No reason has been given as to why he had not exercised that particular option within the stipulated period of two months except stating that he was not independently and individually put on notice. No reason had been given for not questioning the earlier order dated 23.09.2010. The petitioner claimed that he was working in Adhiramapattinam at the time when the Board Proceedings was issued.
- (8) In the counter affidavit, it had been stated that after examining the service conditions of the petitioner which were not either denied or disputed, the respondents had issued the Board Proceedings on 07.01.1995 and granted revised option to be exercised by the



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employees like the petitioner who had been appointed by internal selection to the Officer Cadre and those who were appointed between 01.12.1992 and 30.04.1996. The petitioner had been appointed so in the year 1994 and therefore, fell within that particular category. It had also been stated that the earlier request for revision of option sought by employees/officers for 1992, 1996 and 2002 Wage Revisions, had not been entertained since according to the respondents, it would open the flood gate. It had also been stated that the petitioner's request had been earlier rejected on 23.09.2010. It had been very specifically stated in the counter affidavit that the petitioner had come forward to give his representation after a period of ten years and it had been stated that the petitioner cannot be differentially treated since he had exercised that particular option after over a period of ten years. It was very specifically stated that the petitioner had slept for so many years and had made representations for the same relief again and again. In view of these particular reasons, it had been stated that the writ petition should be dismissed.



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- (9) The learned counsel for the petitioner pointed out that the petitioner was not put on notice at the relevant point of time, was not in service on that particular Branch when the particular Board Proceedings was issued and therefore, was not aware that the Board Proceedings had been so issued and that there was an obligation on the petitioner to exercise such option within a period of two months. It is therefore, contended by the learned counsel for the petitioner that the request of the petitioner should be favourably considered by the respondents.
- (10) With respect to the issue of delay, the learned counsel for the petitioner placed very strong reliance on a judgment of the Division Bench of this Court in ***WA.No.1551/2019 [The Chairman, Tamil Nadu Electricity Board, Chennai and 2 Others Vs. A.R.Krishnasamy and Another]***, wherein the Division Bench, had examined revision of pay to a senior on par with the junior. The facts in that particular case was that the petitioner therein who was the respondent in the writ appeal, had been appointed as Junior Assistant on 08.02.1971, whereas his immediate junior had been appointed as Junior Assistant on 07.12.1972. It was also stated that the minimum



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time scale of pay for the post of Junior Assistant was fixed for both the respondent in the writ appeal and for the junior and thereafter, the respondent in the writ appeal was first promoted and after much longer time, his junior had been promoted. It was also stated that the nature of job was the same and that the respondent in the writ appeal was senior to the named junior and therefore, it was held that both should get the same scale of pay. The writ petition filed by the respondents in WP.No.37854/2004 was allowed by a learned Single Judge of this Court by an order dated 27.03.2012 and it was directed that both senior and junior should draw the same scale of pay particularly because the nature of work was the same and the junior cannot be permitted to draw a higher scale of pay than the senior. In the writ appeal, the reasoning of the learned Single Judge were affirmed and it had also been stated that with respect to delay, that delay would not come in the way and the respondent in the writ appeal had retired though the wage revision had taken place in the year 1985. The issue of delay was considered by the Division Bench and it was stated that in a straight case where two individuals had



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been appointed and one is senior to the other and then subsequently draws a lower pay, then the pay should be equalised to that of the junior.

- (11) In the very same Division Bench judgment, there was also a reference to the judgment of the Hon'ble Supreme Court reported in **1995 [5] SCC 628 [M.R.Gupta Vs. Union of India]**, which was also stressed by the learned counsel for the petitioner herein. Let me extract the relevant paragraphs from the said judgment of the Division Bench:-

"18.In M.R.Gupta Vs. Union of India, 1995 [5] SCC 628, the Hon'ble Supreme Court held as follows:-

"6.....The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting



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mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao v. Mattapalli Raju [AIR 1950 FC 1 : 1949 FCR 484 : 50 Bom LR 181 : (1950) 1 MLJ 752]).

*19.Thus, right of an employee to claim correct salary during the tenure of his service cannot be defeated on account of delay. This view of the Hon'ble Supreme Court was followed by a Division Bench of this Court in **K.K.Perumalsamy, Retd. Assessment Officer, TNEB V. Tamil Nadu Electricity Board, rep.by its Chairman, Chennai**, vide its order dated 24.02.2011 in WA.No.1195 of 2010."*

- (12) In the judgment of the Hon'ble Supreme Court reported in **1995 [5] SCC 628 [cited supra]**, relied upon by the Division Bench, the Hon'ble Supreme Court had held that when the employee is entitled to salary computed in accordance with the Rules, then the right of the said employee to be paid correct salary throughout his tenure in accordance with the computation made according to the Rules, is a right akin to the right of redemption of a subsisting mortgage. The



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crucial words in the said judgment are that the right should be in accordance with the Rules.

- (13) Here, the petitioner is bound by the Rules and Regulations of the respondents herein. The Rules and Regulations were contained in the Board Proceedings in BP [FB] No.6[SB] dated 07.01.1995. The petitioner seeks parity and benefit of that particular Board Proceedings. He is bound by every word in that particular Board Proceedings. That particular Board Proceedings stipulated an outer time of two months to seek revision and to seek option of taking advantage of that particular Board Proceedings and of pay revision for those who had been promoted as Officers which is normally called 1992 Pay Revision. The petitioner claimed that for various reasons, namely, that he was not served with individual notice, that he was serving elsewhere in Adhiramapattinam, he was not aware of the Board Proceedings, and had not exercised that particular option. The petitioner having taken a conscious decision from the date on which the Board Proceedings had been issued in the year 1995, not to obtain the benefit, cannot turn around one fine morning and claim that the



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said Board Proceedings is applicable to him. They are applicable to those employees who follow the Rules and Regulations in accordance with the Board Proceedings.

(14) The petitioner had violated the Board Proceedings by not exercising that particular option within a period of two months. If he does not, then there is no obligation on the part of the respondents to extend that particular Board Proceedings to the petitioner if the petitioner had taken a conscious decision, not to exercise that option. The petitioner had not given any other constructive reason except to state that he was not given independent notice of the same. Independent notice is not required. The petitioner as an employee, should be aware of the Board Proceedings and if he is not aware, he has to blame himself.

(15) It is also contended on behalf of the respondents that the Board Proceedings are also been Gazetted. I do not give any credence to the statement of the petitioner that he was for various reasons, ignorant of the Board Proceedings, and therefore, did not exercise that particular option.



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(16) It is a conscious decision taken by the petitioner not to exercise that particular option. It is also contended by the learned counsel for the petitioner that the Board Proceedings does not have a statutory value and that therefore, the benefit should be extended on par to every employee. It is not so. The Rules and Regulations govern service conditions of every employee, particularly when time limit is given, it is expected that every employee adheres to the Rules and Regulations and exercises that particular option within the time limit. Had the petitioner exercised such option and still had not been considered, then it would have been a different issue. Such exercise of option should be within the time period stipulated namely, within the period of two months.

(17) No credible reasons have been given why the petitioner had not questioned the earlier order dated 23.09.2010. There is actually no whisper about the same. The petitioner, therefore, had not only slept over from not exercising the option within a period of two months, but also had slept over from not questioning the earlier order dated 23.09.2010 and thereafter, in all innocence, had given an application



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in the year 2015-2016 seeking that his representation should be favourably considered.

- (18) The facts stated in the judgment of the Division Bench and by the Hon'ble Supreme Court are clearly distinguishable. They all place stress only on Rules and Regulations. The Board Proceedings in this particular case, govern and places specific time limit for exercise of option and the petitioner had consciously not taken up that particular option. When the petitioner had decided that he would not exercise that particular option, there is no reason why the respondents should extend the time for the petitioner herein.
- (19) It is also to be noted that the criminal case so far as the petitioner is concerned, had finally culminated after being taken cognizance as Spl.CC.No.2/2013 by the learned Chief Judicial Magistrate, Special Court for Vigilance and Anti Corruption Cases at Tiruvallur. It had ended in acquittal on 29.07.2022. It is fairly conceded that the period of suspension had been regularised and the revision of pay for that particular period, had also been extended to the petitioner herein. But a careful perusal of the judgment of the Criminal Court shows that it



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was not an acquittal on honourable terms, but rather, that benefit of doubt alone had been granted to the petitioner. This would imply that the Court had two options, either to convict the petitioner or to acquit him and had taken the second recourse and had exercised discretion to acquit the petitioner herein. Therefore, this particular acquittal would also not come to the rescue of the petitioner herein.

(20) After the order had been dictated, the learned counsel for the petitioner was still insistent and stated that questioning the rejection order dated 23.09.2010, the petitioner had given a representation. The issue was why he did not take up any legal steps questioning that particular order. That particular order stands and there is a delay of more than five years from that particular date.

(21) This Court finds no merit in the writ petition. The writ petition stands **dismissed with a cost of Rs.10,000/- [Rupees Ten Thousand only] to be paid by the petitioner to the Tamil Nadu State Legal Services Authority, Chennai** in view of the recurrent interferences made by the learned counsel for the petitioner during the course of dictation of the order. Such cost to be paid within a period of two



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months from the date of receipt of a copy of this order.

(22) After dictating the above order imposing costs, the learned counsel for the petitioner fomently pleaded that his intentions were only genuine and therefore, considering that particular representation, **the order imposing cost, is removed.**

(23) The writ petition stands dismissed. No costs.

04.09.2023

AP

Internet : Yes

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C.V.KARTHIKEYAN, J.,

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