



W.P.No.35014 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.35014 of 2019
and
W.M.P.No.35802 of 2019

K.Ganesan

.. Petitioner

VS

1.The Chairman
TANGEDCO
144, Anna Salai, Chennai – 2.

2.The Superintending Engineer (ADM II),
Thiruvannamalai Electricity Distribution Circle,
Thiruvannamalai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the 2nd respondent's Memo.No.SET/Adm.I/A.2/F.Audit/2018 dated 24.12.2018 and quash the same and consequently direct the respondents to pay the difference of basic pay and other benefits admissible deducted in pursuance of the impugned order.

For Petitioner : Mr.K.Sakthivel

For Respondents : Mr.K.Rajkumar
Standing Counsel

ORDER

This writ petition has been filed in the nature of certiorarified mandamus seeking interference with an order of the second



W.P.No.35014 of 2019

respondent / Superintending Engineer (ADM-I), Thiruvannamalai Electricity Distribution Circle at Thiruvannamalai dated 24.12.2018 in Memo No. SET/Admn I/A.2/F.Audit/2018 and direct the respondents to consequently pay the difference of basic pay and other benefits admissible which has been deducted consequent to the impugned order.

2. The petitioner has retired on superannuation. He was originally appointed as Technical Assistant on 14.12.1987 in the Tamil Nadu Electricity Board. He had passed the departmental examinations while working as Technical Assistant. He was then promoted to the post of Junior Engineer (Electrical Grade II) from the category of Technical Assistant and joined on 06.06.1997.

3. When he was working as Technical Assistant though he had passed the departmental examination, the increment which is payable to him consequent to passing of the departmental examination had not been paid to him. On passing of the departmental examination, he is entitled for further promotion. The further promotional post is Junior Engineer (Electrical Grade II). He was promoted to that particular post on 06.06.1997. On that particular date and from that particular date, since he had already



W.P.No.35014 of 2019

passed the departmental examination, he is entitled for an increment, which is payable consequent to passing of the departmental examination.

4. In the affidavit, it had been stated that the respondents had, while determining the pay to be fixed to him on the date when he was promoted, not only granted the increment which is normally available consequent to years of service put in by him but also granted the increment which has to be paid to him consequent to the passing of the departmental examination and his promotion. Both these increments go hand in hand. The grant of increment for passing of departmental examination was subjected to audit verification. The audit objections came about in the year 2011. A audit slip was issued on 13.10.2011 in Audit slip. no.22. In the said audit slip, it had been stated that the grant of increment of Rs.175/- consequent to passing of the departmental examination and consequent to promotion on 06.06.1997, should have been calculated on the pay scale as was on 01.12.1996.

5. For this, the audit department placed reliance on Board proceedings No.52, which should actually be No.58 of Secretariat Branch, dated 18.07.1998. Holding so, an audit slip was therefore



W.P.No.35014 of 2019

issued that there should be recovery of excess pay to the petitioner herein. The petitioner had raised a protest and the correspondences in that regard were on-going.

6. In the mean while, there was a second audit slip which was issued, dated 04.10.2018 in audit slip. no.18. In this audit slip, not only was the increment that was granted consequent to passing of departmental examination questioned but also the increment granted consequent to the years of service put in was also questioned. It was stated that these increments should also be re-worked in accordance with the salary which the petitioner was drawing as Technical Assistant. A further calculation memo was issued and a further order was passed directing recovery of excess pay.

7. Among other correspondences which the petitioner had commenced, an information under the Right to Information Act was emanated stating that there was no such board proceedings No.52 at all. But it can be assumed that it was a typographical error and the reference should only be to board proceedings No.58.

8. Board proceedings no.58, dated 18.07.1998 was issued



W.P.No.35014 of 2019

with the object of revision of scales of pay, rates of dearness allowance, house rental allowance, city compensatory allowance, special pay and other allowances with effect from 01.12.1996, consequent to a memorandum of settlement between the Tamil Nadu Electricity Board and its workers. Those employees or workmen, who were working as on the date of the board proceedings, namely 18.07.1998 would be granted a revision of pay, which would flow back retrospectively to 01.12.1996.

9. I hold this does not mean that increment passing of departmental examination or the increment for putting in numbers of years of service, should also be calculated as on 01.12.1996.

10. A settlement reached under Section 12(3) of the Industrial Disputes Act, 1947 between the Board on the one hand and in this case, the Tamil Nadu Electricity Board on the one hand and its workers, relates to revision of scale, which would be an upward revision in the scale and a cut off date is given from which such upward revision of scale is permissible. That date was determined as 01.12.1996.

11. Any employee who joined, say in March, 1997 cannot



W.P.No.35014 of 2019

expect any revision of pay. If an employee had joined in September 1996 then as on from 01.12.1996 alone, he would be eligible for any revision of pay. There cannot be a downward revision or recovery based on a settlement reached under Section 12(3) of the Industrial Disputes Act. That settlement is to promote a harmonious relationship between the Board and the workmen. It should not be put to the disadvantage of the workmen or in this case, to the petitioner herein. The petitioner had been promoted on 06.06.1997. As and from that date, whether this settlement had been reached or not, he was eligible for increment consequent to passing of the Departmental Examination and consequent to his being promoted as on 06.06.1997. Therefore, I hold that the audit objections defy logic.

12. As and when any employee is promoted, such promotion should be on the basis of his experience or also on the pre-condition that he passes the departmental examination. If he had put in the specific number of years required for promotion and had already qualified for departmental examination then as and from that particular date when he is promoted, he is entitled for an increment consequent to his passing of the departmental examination. If promotion is only based on the experience and not



W.P.No.35014 of 2019

on the basis that of passing the departmental examination, then that increment cannot be granted. That would arise when an accelerated career progression (ACP) pay protection is granted owing to a longer period of gap before promotion or when promotion is denied for more number of years and not granted to the employee. In the instant case, this scenario would not be applicable to the petitioner herein.

13. The second audit slip which had been issued on 04.10.2018 went a little further. It also interfered with the increment which was granted consequent to the numbers of years of service which the petitioner completed, which increment is payable on the date of his promotion.

14. Therefore, I hold there cannot be a revision of that particular increment also.

15. Both the audit slips, have been issued on wrong premises. The board proceedings was issued on the basis of a settlement reached only to benefit the workmen and not to be a detriment of any workmen.



W.P.No.35014 of 2019

16. The probable clauses in Board Proceedings No.58 dated

18.07.1998 on which the audit slips had been issued are as

follows:-

"(3) A service weightage of increment for the first 7 (seven) years of regular completed service which will count for increment and thereafter one increment for every 10 years of such service, will be allowed, after fitment in the new scale of pay.

(4) The pay of an employee appointed or promoted to a post on or after 1st December 1996 shall be fixed in the following manner:

(i) if he was holding a post on 1st December 1996 and was promoted or appointed to another post subsequently, his pay in the old post shall be fixed as on 1st December, 1996 under sub-regulation (1) of this regulation in the revised pay scale and then his pay in the post which he held subsequent to 1st December 1996 fixed in the appropriate revised scale under the Tamil Nadu Electricity Board Service Regulations or other orders in force. Such employees shall also be permitted to revise the option for promotion pay fixation already exercised by them under the existing scale within a period of four months. Such option once exercised will be final.

(ii) If he was appointed to the service in the Board for the first time on or after 1st December, 1996 and before 08.07.1998, his emoluments on the date of joining service comprising the basic pay and dearness allowance at 1510 points shall constitute the emoluments and the revised pay shall be fixed as per regulation 4 with effect from the date of his joining service.

(5) If the pay as fixed in the officiating post



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W.P.No.35014 of 2019

under sub-regulation (1) is lower than the pay fixed in the substantive post, it shall be fixed at the stage next above the substantive pay."

17. These clauses state that if an employee had been promoted after 01.12.1996 and if he had been promoted, his pay in the old post shall be fixed as 01.12.1996. It also states that his pay in the post which he held subsequent to 01.12.1996 shall be fixed in the appropriate revised scale. In the instant case, the post which he subsequently held was as Technical Assistant. This should be the scale till the date of his promotion. On his promotion whatever subsequent date, his pay should be fixed accordingly as and from the date of promotion.

18. In the instant case, the petitioner herein, had been granted the increment as on 06.06.1997, which is subsequent to 01.12.1996. Even if he had been promoted as on 01.12.1996, his pay would be only as on 01.12.1996 alone. Since he was promoted subsequent on 06.06.1997, his emolument as on 06.06.1997 alone has to be considered. There cannot be a reversal back to 01.12.1996, because on that particular day, he was still a Technical Assistant and was drawing pay as it was fixed on 01.12.1996. The board proceedings cannot be made applicable to the petitioner.



W.P.No.35014 of 2019

19. I hold that on the date of promotion, whatever was the scale, for Junior Assistant is concerned, it should be paid to him. On that basis the increment for the number of years of service should be paid to him. On the basis of him having passed the departmental examination, he is entitled for a further increment. This is what had been done by the respondents when they had originally issued the pay certificate to the petitioner.

20. Both, the audit slip of the year 2011 and the audit slip of the year 2018 suffer from applying the board proceedings No.58, which is in fact a consequence of a settlement under Section 12(3) of Industrial Disputes Act, for fixation of pay from 01.12.1996. The respondents had fixed his pay as on 06.06.1997 for the subsequent period only. He was not promoted on 01.12.1996. In view of that particular fact, I hold that the board proceedings is not applicable to the petitioner herein.

21. My attention is also drawn to a further proceedings issued on 13.01.2015, wherein it had been stated that audit should be done on the basis of instructions which had been issued and which should be followed scrupulously. It was directed that audit should be conducted periodically before the expiry of four years. It



W.P.No.35014 of 2019

had also been pointed out that a limitation period of five years is fixed for issuing notice for recovery of excess pay.

22. This proceedings would directly affect the second audit slip, which was of the year 2018 and which proceeded to revise the pay of the petitioner right from 1996 onwards. The audit slip dated 04.10.2018 is straight away set aside.

23. The other audit slip which had been issued in the year 2011 dated 13.10.2011 in Audit No.22 proceeds on the ground that the pay had been fixed with effect from 06.06.1997 on the basis of a Board proceedings No.52 is dated 18.07.1998. The petitioner was promoted only on 06.06.1997 and as on that date his pay will have to be fixed afresh. There can be no relating batch to 01.12.1996, since he was not promoted on that date. Therefore, the audit slip dated 13.10.2011 in Audit No.22 is also set aside by this Court.

24. In view of the above reasoning, I hold that the recovery notice has to be interfered with and is interfered with and is hereby set aside. Necessary proceedings will have to be issued by the respondents if the amounts have been recovered from the petitioner herein to pay back the said recovered amounts. The said exercise



W.P.No.35014 of 2019

has be completed within a period of sixteen weeks from the date of receipt of a copy of this order. If any clarifications are required by the respondents, notice may be issued to the petitioner seeking such clarifications and his representation may be taken note of before any further others are passed.

25. Writ petition stands allowed. No costs. Connected miscellaneous petition is closed.

06.07.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To:

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- 2.The Superintending Engineer (ADM II),
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W.P.No.35014 of 2019

C.V.KARTHIKEYAN,J.

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W.P.No.35014 of 2019

06.07.2023