



W.P.(MD) No.22395 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 04.08.2023

ORDERS PRONOUNCED ON : 08.08.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.22395 of 2016

and

W.M.P.(MD) No.16039 of 2016

C.Porchelvi

... Petitioner

Vs.

1.Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Rep., by its Secretary,
144, Anna Salai, Chennai-600 002.

2.The Chief Engineer, Distribution,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Madurai Region, K.Pudur, Madurai-625 007.

3.The Deputy Chief Internal Audit Officer,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Madurai Region, Audit Branch,
K.Pudur, Madurai-625 007.

... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records relating to the impugned proceedings of the 1st respondent in reference Memo No.008038/G. 17/G-171/2015-1, dated 19.08.2016 and quash the same.

For Petitioner : Mr.V.Veerapandian
for M/s.Vastlaw Associates

For Respondent : Ms.M.Parameswari
Standing Counsel

ORDER

Heard Mr.V.Veerapandian, learned counsel for the petitioner and Ms.M.Parameswari, learned Standing Counsel appearing for the respondents.

2. The case of the petitioner is that he is an Engineering Graduate. He joined as Assistant Engineer (Training) with the then Tamil Nadu Electricity Board, now known as Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) on 07.06.1995. He was confirmed and appointed as Assistant Engineer on 07.09.1995 in the basic pay scale of



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Rs.2150-85-2570-85-3050-105-3680 and drawing a basic pay of Rs.2,150/-.

Thereafter, he passed the Electricity Account Test of the Department and was granted incentive increment and his pay was increased to Rs.2,235/- on 24.05.1996. He was also granted regular annual increment and his basic pay scale was increased to Rs.2,235/- on 24.05.1996. He was also granted regular annual increment and his basic pay scale was increased to Rs.2,320/- with effect from 01.07.1996.

3. One Mrs.R.Meenakshi, a junior to the petitioner joined as Assistant Engineer (Training) on 04.10.1995 and she was appointed after training as Assistant Engineer on 04.01.1996, four months later to the petitioner. She also passed Department Accounts Test on 24.05.1996. She was granted annual increment on 01.07.1996, since she did not complete her one year by then. Hence, she was drawing less pay than the petitioner being a junior. During that relevant point of time, the petitioner's pay stood higher than Tmt.R.Meenakshi because of the petitioner's earlier regular annual increments and increment due to the passing of the Department Test.



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4. The then Tamil Nadu Electricity Board, by orders in B.P.No.59, dated 18.07.1998, ordered revision of scale of pays, rates of Dearness Allowance, House Rent Allowance, City Compensatory Allowance, Special Pays and other allowances with effect from 01.12.1996 by notifying Tamil Nadu Electricity Board Revised Scales of Pay (Officers) Regulations, 1998. Accordingly, the petitioner was entitled to draw salary from the basic pay scale of Rs.7225-225-12175 and her basic pay was fixed as Rs.7,225/- with effect from 01.12.1996. In terms of the revision brought by the said Regulations, the petitioner's pay and her junior's pay was fixed in the basic pay scale of Rs.7225-225-12175. Subsequently, she was given an annual increment on 01.01.1997 and her pay was increased to Rs.7,450/- in the same scale. But, no refixation was done to the petitioner. Thus, as on 29.05.1997, the petitioner's basic pay scale stood at Rs.7,225/- only, whereas the basic pay scale of his junior Tmt.R.Meenakshi was fixed at Rs.7,675/-. The situation continued for the further years with periodical increase to the junior and the petitioner's salary being lesser than the junior.



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5. Under these circumstances, the petitioner submitted a representation dated 22.12.2016 to the then Superintending Engineer, Madurai Electricity Distribution Circle for refixation of her pay on par with her junior Tmt.R.Meenakshi. The Superintending Engineer, Madurai Electricity Distribution Circle recommended for refixation of the petitioner's scale of pay on par with her junior. In turn, the Secretary, Tamil Nadu Electricity Board, ordered refixation of the pay scale of the petitioner on par with her junior by proceedings dated 24.10.2008. Accordingly, the respondents rectified the pay anomaly as ordered by the 1st respondent *vide* proceedings dated 19.03.2009.

6. To the shock and surprise of the petitioner, she was informed that by Audit Slip No.1, dated 17.05.2014, the Audit Department has raised objection to the refixation of the petitioner's pay on the ground that the pay anomaly was due to her availing of a leave and not drawing equivalent pay to her junior up to 30th June, 1998. In response to the same, the petitioner submitted a reply on 03.06.2014 to the 2nd respondent explaining that the pay anomaly had arisen between the petitioner and her junior due to the



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reason that merger of one incentive increment and one regular annual increment granted to her in the revision of scale of pay effected from 01.12.1996 and not due to availing of leave as stated by the 3rd respondent. But, the 3rd respondent in total misrepresentation, declined to drop the audit slip.

7. The petitioner once again submitted a representation on 18.09.2015 to the 2nd respondent to drop the audit slip. But, without considering the said representation, the 1st respondent, by impugned proceedings in reference in Memo No.008038/G.17/G-171/2015-1, dated 19.08.2016, ordered cancelling of re-fixation of pay anomaly ordered to the petitioner in memo dated 24.10.2008 and further, ordered for recovery of excessive salary and allowance paid to the petitioner. After receipt of the impugned proceedings, the petitioner made a representation dated 19.09.2016 to the 1st respondent for reconsideration. The said representation is pending. Meanwhile, the respondents are seeking to implement the impugned proceedings and recover from the salary of the petitioner and also to revert back to her basic pay



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scale. Under these circumstances, the petitioner is constrained to file this writ petition.

8. A counter affidavit has been filed on behalf of the respondents.

9. It is averred in the counter affidavit that the petitioner was on leave on loss of pay without medical certificate and as such, she was not entitled to annual increment on 01.07.1997. The petitioner though was on leave on loss of pay when the revision of scale of pay was effected on 01.12.1996, i.e., leave on loss of pay from 16.09.1996 to 23.02.1997, she had maliciously opted to come over the revision of pay with effect from 01.12.1996. Without noticing the same, the respondents had granted revision of scale of pay with effect from 01.12.1996 instead of from 24.02.1997. It is seen that on such continued wrong pay, the petitioner sought for pay anomaly by citing cases of her junior Tmt.R.Meenakshi, who was regular to duty and was receiving increments rightly as per the provisions of the Tamil Nadu Electricity Board Service Regulations. As the erroneous fixation was not known at the



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earlier period of time, the pay anomaly was ordered *vide* the memo dated 24.10.2008.

10. An objection was raised by the Audit Branch *vide* Audit Slip No.1, dated 17.05.2014 for the rectification of pay anomaly and the proposal was re-examined. It was found that such rectification of pay anomaly was ordered to the petitioner without considering the extraordinary leave without pay and allowances and without medical certificates for the medical leave availed by the petitioner. As such, the petitioner was not eligible for the rectification of pay anomaly with effect from 01.01.1997 to 29.05.1997 on par with her junior. Accordingly, the 1st respondent *vide* the memo dated 24.10.2008 passed order, whereby re-fixation of pay anomaly to the petitioner was cancelled and decided to recover the allowances paid excessively.

11. Learned counsel for the petitioner submits that the impugned proceedings of the 1st respondent cancelling the re-fixation of basic time scale of pay of the petitioner on par with the petitioner's junior and ordering



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recovery of excess pay and allowances is against the principles of service jurisprudence and in gross violation of Articles 14 and 21 of the Constitution of India and on wrong presumptions and assumptions and sought to allow the writ petition.

12. Learned Standing Counsel appearing for the respondents submits that no employee is eligible for the increment/wages or revision of scale of pay for the period availed as extraordinary leave without medical certificate. As such, the petitioner is not eligible for the period availed the extraordinary leave without pay and allowances and without medical certificate. As such, the learned counsel would submit that the petitioner is not entitled to retain the excess pay and allowances and the order impugned was validly passed and sought to dismiss the writ petition.

13. Learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Apex Court in (i) ***State of Punjab and others Vs Rafiq Masih (White Washer)*** reported in ***(2015) 4 SCC 334***, (ii) an order of the Principal Bench of this Court in W.P.No.6945 of 2022, dated 26.06.2023



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and (iii) an order of this Court in W.P.(MD) No.16106 of 2016, dated 20.07.2023.

14. This Court gave anxious consideration to the submissions made by the respective counsels and the reliance placed before the Court.

15. There is no dispute with regard to the facts of the case. Admittedly, in the year 2008, anomaly of pay of the petitioner with her junior was rectified by the respondents. But, *vide* impugned proceedings dated 19.08.2016, the respondents cancelled the earlier pay anomaly rectification order and sought to recover from the petitioner. In fact, on several occasions, similar identical issue came for consideration before this Court. By following the proposition of law laid down by the Hon'ble Apex Court in the (i) *cited supra*, this Court set aside the proceedings of recovery in the orders *cited* (ii) and (iii) *supra*. The relevant portion of the order date 20th July, 2023 in (iii) *cited supra* is extracted hereinunder:

“4. Straight away the impugned order is liable to be quashed on the strength of the directions issued in



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the case of State of Punjab and others etc., vs. Rafiq Masih (White Washer) etc., (2015 (4) SCC 334). At paragraph – 12 thereof the Hon'ble Supreme Court prescribes the following directions:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group C and Group D service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though



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he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employers right to recover.”

5. The one of the guidelines, as relevant to the present case is that no recovery to be initiated beyond the period of five years from the allegedly offending event. In the present case, the incentives have been awarded as early as in 2007, whereas the impugned order has been passed only in 2016, based on a clarification issued in 2013. Thus, the order is far beyond the time limit as prescribed and thus fails.”

16. In the present case also, by cancelling the order passed in the year 2008, the impugned proceedings is issued in the year 2016 beyond the period of five years. Thus, in the considered opinion of this Court, the impugned order is far beyond the time limit as prescribed and accordingly, liable to be set aside.



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17.1. For the above mentioned reasons, this Writ Petition is allowed and the order impugned in this Writ Petition in Memo No. 008038/G.17/G-171/2015-1, dated 19.08.2016 is hereby set aside.

17.2. No costs.

17.3. Consequently, connected miscellaneous petition is closed.

08.08.2023

Note: Issue order copy by 10.08.2023.

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

1. The Secretary,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
144, Anna Salai, Chennai-600 002.



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BATTU DEVANAND, J.

abr

2.The Chief Engineer, Distribution,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Madurai Region, K.Pudur, Madurai-625 007.

3.The Deputy Chief Internal Audit Officer,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Madurai Region, Audit Branch,
K.Pudur, Madurai-625 007.

**Pre-delivery Order made in
W.P.(MD) No.22395 of 2016**

08.08.2023