THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.01.2024

Pronounced on : 07.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.10105 of 2022 and
WMP.No.9793 of 2022

S.Pavayee ... Petitioner

Vs.

1.The Chairman,
Managing Director,
Tamilnadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai-2
2.The Chief Engineer,
Tamilnadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai-2
3.The Superintendent Engineer (Civil Hydro Project),
Tamilnadu Generation and Distribution Corporation Ltd.,
Erode. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records in connection with the impugned orders of the third respondent in Ku.Aa.No.423/Ni.P.3/Ni.U/Ko.Uthiya Porutham/2022-4 dated 24.03.2022 and consequential order in Ku.Aa.No.423/Ni.P.3/Ni.U/Ko.Uthiya Porutham/2022-5 dated 05.04.2022 and to quash the same and consequently direct the third respondent to restore old scale of pay of petitioner as Rs.74,200/- as on 01.01.2022.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.K.Rajkumar,
Standing Counsel

ORDER

This writ petition has been filed challenging the order passed by the third respodnent dated 24.03.2022 and consequential order dated 05.04.2022 thereby cancelled the revision of pay scale and ordered to recover the said amount.

2. The petitioner's husband was employed in the respondents Board. He died in harness on 20.03.1992. The petitioner was provided compassionate appointment as Officer Helper by an order dated 17.04.1996. Thereafter she was appointed as Junior Assistant by an order dated 18.01.1999. After completion of ten years of her service as Junior Assistant, she was sanctioned selection grade increment with effect from 19.01.2009. She had passed Subordinate Test Part-I and taking into consideration of the same, she was promoted as Assistant on 12.08.2009. She was sanctioned incentive increment for passing of Accountancy Test

by an order dated 17.10.2014. Thereafter, she was promoted to the post of Accounts Supervisor by an order dated 26.05.2015 and while being so, she had joined to pursue her B.Com degree through Open University. She had completed the B.Com degree course in the year 2000. However, she failed in two papers and cleared Accountancy and English on 28.12.2013. The employees of the Board are entitled to two sets of incentive increment for passing of Accountancy Lower / Higher .

2.1 The Board employee passed Accountancy as optional in Part-III B.Com / M.Com as equivalent to Accountancy Lower / Higher, also entitled for incentive increment. Therefore, the petitioner requested the third respondent for sanction of incentive increment for passing of B.Com by cancelling the earlier incentive increment for passing of Accountancy Test(Lower). Therefore, clarification was sought from the second respondent and by its order dated 18.02.2016, it was clarified and directed to sanction two sets of incentive increment for passing of her B.Com degree with effect from 29.12.2013 by cancelling the incentive increment granted for passing of Accountancy Test(Lower). Accordingly, the petitioner was sanctioned two sets of increment. After lapse of six years, the third respondent now issued order dated 24.03.2022 thereby cancelled the order of sanctioning two sets of increment for passing B.Com degree with effect from 29.12.2013 on the basis of audit objection and refixed her scale of pay from Rs.74,200/- to Rs.69,900/-. Consequently, the third respondent also issued order to recover the said amount by an order dated 05.04.2022.

3. The learned counsel for the petitioner would submit that the orders of recovery and refixation of pay passed by the third respondent are violation of principles of natural justice since no notice was issued and no opportunity was given to the petitioner before cancelling the two sets of increment. The third respondent passed order only on the ground that the petitioner failed to pass the B.Com degree in the pattern of 10+2+3. There is no regulation /provision which mandates that degree should be obtained in the pattern of 10+2+3. She had joined degree of B.Com in the year 1997 and had completed the course in the year 2000. After completion of degree, she had passed her higher secondary in the

year 2018. Therefore, her degree is valid. As per Electricity Board Regulations 96(1)(b), the prescribed qualification for promotion to the post of Accounts Supervisor is passing of Accountancy Test(Lower Grade). Further, for promotion to the post of Assistant Accounts Officer is passing of Accountancy Test(Higher Grade). As per Regulations, the employee of the Board passed Accountancy as optional subject neither in the B.Com nor M.Com are exempted to pass Accountancy of Higher Grade as per Board proceedings No.59 dated 24.05.2013. Therefore, the completion of degree is accepted only for the limited purpose and granted promotion based on the passing of Accountancy as optional subject in Part-III. Therefore, the third respondent is estopped from passing the impugned order of recovery and refixation of pay.

3.1 He further submitted that as per Board proceedings No.750 dated 30.04.1979, the incentive increment shall be granted for passing of B.Com / M.Com. In fact, after obtaining the clarification from the second respondent, the petitioner was sanctioned incentive increment for passing of her B.Com degree. He further submitted that as per Board proceedings

No.59 dated 24.05.2013, the degree is not the requisite qualification for Accounts Supervisor and only passing of Accountancy in part III B.Com/ M.Com is valid for limited purpose. He also submitted that the recovery of excess pay, if any found, be made within the period of five years from the date of such fixation. Therefore, the order of re-fixation and recovery are barred by limitation as per memo issued by the respondents dated 13.01.2015. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***State of Punjab and Others Vs. Rafiq Masih(White Washer) and Others*** reported in ***(2015) 4 SCC 334***, wherein it is held as follows:

> *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:*
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> *(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 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 employer's right to recover.

3.2 He also releid upon the judgment of the Hon'ble Full Bench of this Court in the case of ***M.Ramachandran Vs. Chairman, Law Admissions, Tamilnadu Dr.Ambedkar Law University, Chennai*** reported in ***2018 (2) CWC 705***, wherein it is held as follows:

42. We are also of the view that once a recognized university or a recognized board issues a certificate, it is not for any other authority to question *the certificate on the ground of ineligibility to obtain the certificate, until and unless the certificate is cancelled by an appropriate authority and/or by a Court of law. To hold otherwise would be to open the pandora's box, for years later certificates might be questioned on grounds such as inadequate attendance, failure to clear internal test examinations and the like and it would be impossible for candidates possessing the degree and/or certificate to adduce cogent materials and/or evidence to satisfy those questioning the certificates. When a regular certificate is granted by a recognized board, there is a presumption that the candidate was eligible to be conferred the certificate.*

4. The respondents filed counter and Mr.K.Rajkumar, the learned Standing Counsel submitted that as per Board proceedings in (Per) B.P.CMD Proceedings No.59 (Administration Branch) dated 24.05.2013, it was issued to the effect that a diploma, degree, post graduate degree after a pass in SSLC, Higher Secondary, Basic Degree only be considered for appointment, promotion in the services of TANGEDCO. As per Board proceedings in (Per) F.B.TANGEDCO Proceedings No.25 dated 24.05.2014, it was issued amending the Tamilnadu Electricity Board Service Regulations in Annexure-III to

Regulation 94. Among other things, it has been ordered that on and from 24.05.2014, for appointment as Junior Assistant in Accounts cadre, the candidates must hold B.Com degree obtained from any university established by law in India and recognized by the University Grants Commission for the purpose of its grant and recognized by the Government of Tamilnadu for the purpose of appointment. As far as the petitioner is concerned, she completed degree only on 28.12.2013. That apart, she had completed degree in the Open University without passing Higher Secondary Education. Therefore, it was rightly ordered to revise the scale of pay and also ordered to recover the excess payment of two sets of increment to the petitioner.

5. Heard, the learned counsel appearing on either side.

6. On perusal of records, admittedly the petitioner had passed SSLC on 30.01.1996 but before undergoing 12th std, Higher Secondary Education, she had obtained B.Com degree through Open University on 28.12.2013. For completion of her Bachelor of Commerce degree, she

was granted two incentive increment and she was also promoted to the post of Accounts Supervisor in the upgradation post of Assistant on completion of three years Bachelor of Commerce degree. Batch of writ petitions was filed before this Court challenging the order of reversion from the post of Accounts Supervisor to the post of Assistant on the ground that the graduation degree in Commerce obtained by them through Open University system did not qualify for exemption in view of the Government Order in GO.Ms.No.107 Personnel & Administrative Reforms Department dated 18.08.2009, GO.Ms.No.116 P&AR Department dated 18.08.2010 and the Board Proceedings in BP(FB).No.5 dated 08.04.2011. Accordingly, the exemption was granted to them from passing a departmental test for promotion without undergoing a regular graduation degree. In the writ petition in WP.No.7276 of 2012 dated 27.06.2012, this Court held as follows:

> *30. Therefore I am of the opinion that (1) so long as the regulation recognize open university degrees only for the limited purpose of granting exemption from appearing in departmental tests (ii) so long as the open university degrees/post graduate degrees are not considered as equivalent to degrees and post graduate*

degree obtained under regular system but are admitted only for the purpose of granting a limited exemption from passing a departmental test, the respondent are not justified in reverting the petitioner. Therefore the Petitioners are entitled to succeed.

31. Hence the Writ Petitions are allowed and the impugned orders are setaside. However, this will not preclude the respondents from bringing any amendment to the Service Regulation if they are so choose. There shall be no order to costs.

7. In pursuant to the said order, as per the respondents Board proceedings in (Per) B.P.CMD Proceedings No.59 (Administration Branch) dated 24.05.2013, orders were issued as follows:

"The issue relating to employees having Open University Degree without acquiring 10+2 for the purpose of appointment to entry level posts and promotion, and the other issue of accepting Open university degree in B.Com.or M.Com. as the case may be, as prescribed in the relevant service regulation for the limited purpose of exemption from passing departmental exam of accountancy, have been examined in detail based on the Judgment delivered by

Honourable Justice Thiru.V.Ramasubramanian, on 07-06-2012 in Writ Petition No.7276 and 7278 of 2012).

2. Non-technical posts in Tamil Nadu Generation and Distribution Corporation limited (TANGEDCO) can broadly be classified into two categories viz.

(1) Posts requiring basic degree as qualification;

(2) Posts requiring minimum general educational qualification as the required qualification which does not require degree as a qualification. In respect of those non technical posts, where minimum general educational qualification is prescribed, the individual should have passed 10th standard or old SSLC.

(3) Apart from the above said qualifications, there are certain other departmental tests like Accountancy Higher grade/Accountancy Lower Grade have been prescribed in the Service Regulations. In that case, necessary exemption from passing the above said tests have been given to those who have passed either B.Com./M.Com. degree from a recognized University as prescribed. Some employees have acquired the said B.Com. or M.Com., degree through Open University system i.e. without passing under 10+2+3 system. Regarding question of considering the above said degrees obtained through Open University System, as

equivalent to the said departmental tests, the Hon'ble High court has considered the whole issue in para 19 of the said Judgment referred in para 1 above that "No where the Supreme Court or the Government Orders stated that those degrees cannot even be recognized for the limited purpose of granting exemption from passing the Departmental Tests", The Hon'ble High Court has also held in para 30 of the said Judgment as follows:

"(i) so long as the regulations recognize Open University Degrees only for the limited purpose of granting exemption from appearing in departmental tests; and (ii) so long as the Open University Degree/Post Graduate Degrees are not considered as equivalent to Degrees and Post Graduate Degrees obtained under regular stream, but are admitted only for the purpose of granting a limited exemption from passing a departmental test, the respondents are not justified in reverting the Petitioners. Therefore, the Petitioners are entitled to succeed".

4. In view of the above, as far as passing of departmental exams like accountancy lower or higher grade as the case may be, the following is the correct position.

(a) Typists/Steno Typists are exempted from passing accountancy tests as per the relevant service regulations, hence they are eligible to be considered for promotion even if any they have not passed accountancy tests prescribed,

(b) In respect of Accounts Branch, many individuals have passed B.Com. or M.Com. through Open University System. The Hon'ble High Court has already ruled in said Judgment referred to in para 1 that for the limited purpose of exemption from passing departmental exam., Open University Degrees can be considered. Therefore, for the purpose of promotion in Accounts Branch and Audit Branch, the relevant service regulation on the date of crucial date prescribing passing of B.Com. or M.Com. or both at the case may be, either through formal system or through Open University should be applied only for the limited purpose of exemption from passing departmental exam only. This should not be confused with the posts for which basic degree is prescribed as minimum qualification at every level or for promotion.The above guidelines may be followed in preparing the promotion panel to the non-technical posts following the correct legal position as set out by the Hon'ble High Court

adhering to relevant service Regulation in force on the Crucial Date." that for the limitation purpose of exemption from passing departmental examination Open University degrees can be considered. Therefore for the purpose of promotion in accounts branch and Audit Branch the relevant service regularization on the crucial date prescribing passing of B. Com. Or M.Com. as the case may be either through formal system in through open University shall be applied only for the limited purpose of exemption from passing the departmental and the same should not be confused with the posts for which the basic degree is prescribed as minimum qualification at entry level or for promotion."

8. Thus it is clear that for the limited purpose of exemption from passing departmental examination, Open University degrees can be considered. Therefore, for the purpose of promotion in Accounts Branch and Audit Branch, the relevant service regulation on the crucial date prescribing passing of B.Com or M.Com as the case may be, either through formal system or through Open University shall be applied only for the limited purpose of exemption from passing departmental exam and the same should not be confused with the posts for which basic

degree is prescribed as minimum qualification at entry level or for promotion. Thereafter, by the Board's proceedings in (Per) F.B.TANGEDCO Proceedings No.25 dated 24.05.2014, orders were issued thereby amended the Tamilnadu Electricity Board Service Regulations in Annexure-III to Regulation 94. Accordingly, on and from 24.05.2014, for appointment as Junior Engineer in Accounts cadre, the candidates must hold the B.Com degree obtained from any university established by law in India recognized by the University Grants Commission for the purpose of its grant and recognized by the Government of Tamilnadu for the purpose of appointment.

9. Whereas the petitioner had obtained B.Com degree through Open University, that too without passing of Higher Secondary Education i.e. +2. Considering the same, the respondents Board by its proceedings (Per) FB TANGEDCO proceedings No.11 dated 30.03.2020 had taken a decision to cancel /dispense with the scheme of advance increment allowed for passing of Accountancy Lower grade/Accountancy Higher Grade/B.Com /M.Com to the Accounts and Audit Employees with effect

from 24.05.2014. The Board proceedings is as follows:

> *(i) The advance increment granted for passing of Accountancy Lower Grade/Accountancy Higher Grade/B.Com/M.Com. shall be dispensed with to the Accounts and Audit Employees with effect from 24-05-2014 i.e., from the date of issue of order prescribing the B.Com. degree as requisite qualification for appointment as Junior Assistant in Accounts Cadre.*
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> *ii) In respect of the Junior Assistant (Accounts) and Junior Auditor who have been sanctioned incentive increment for passing Accountancy Lower Grade/Accountancy Higher Grade/B.Com./ M.com. from 24-05-2014, the said incentive payment shall be recovered from them.*
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> *iii) The employees who have been internally selected for the post of Junior Assistant (Accounts) and Junior Auditor before 24-05-2014 and passed Accountancy Lower Grade/Accountancy Higher Grade/B.Com. degree after 24-05-2014 alone shall be considered for sanction of two incentive increments as per Board's proceedings No.750 dated 30-04-1979."*

10. Accordingly, the Junior Assistant(Accounts) and Junior

Auditor who have been sanctioned incentive increment for passing of Accountancy Lower Grade / Accountancy Higher Grade/B.Com/M.Com from 24.05.2014 shall be recovered from them. The petitioner had completed her B.Com degree in the Open University only on 28.12.2013. Therefore, she is not eligible for sanction of advance increments and the amount paid to the petitioner can be recovered and the judgments cited by the learned counsel for the petitioner are not applicable to the case on hand. As such, this Court finds no infirmity or illegality in the orders passed by the third respondent and the writ petition is devoid of merits and liable to be dismissed.

11. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

07.02.2024

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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Managing Director,
Tamilnadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai-2
2.The Chief Engineer,
Tamilnadu Generation and Distribution Corporation Ltd.,
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Tamilnadu Generation and Distribution Corporation Ltd.,
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G.K.ILANTHIRAIYAN, J.

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