



W.P.No.8304 of 2017

IN THE HIGH COURT AT JUDICATURE AT MADRAS

DATED: 19.08.2024

CORAM:

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.8304 of 2017

and

WMP.No.9092 of 2017

M.Manimekalai

...Petitioner

Vs.

1.The Chairman,
Tamil Nadu Generation and Electricity Distribution Corporation,
No.144, Anna Salai, Chennai-2.

2.The Chief Engineer (Personnel)
Tamil Nadu Generation and Electricity Distribution Corporation,
No.144, Anna Salai, Chennai-2.

3.The Superintending Engineer,
Vellore Electricity Distribution Circle,
TANGEDCO, Vellore- 632 006..

4.The Deputy Chief Internal Audit Officer,
BOAB, Vellore Region,
TANGEDCO, Vellore-6.

5.The Executive Engineer (O&M),
TANGEDCO,



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Ranipet- 632 401.

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...Respondents

Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire record connected with the impugned order passed by the 5th respondent *vide* Memo No.81/EE/O&M/Rpt/Adm.s/A-2/F-Adit/2017, dated 07.03.2017 and quash the same and consequently DIRECT the respondents to restore the scale of pay.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.K.Rajkumar

Standing Counsel

ORDER

Writ petition is filed for issuance of a Writ of Certiorarified Mandamus relating to the impugned proceedings dated 07.03.2017 and quash the same and for consequently directing the respondents to restore the scale of pay.

2. The petitioner joined the services of the Tamil Nadu Electricity Board as office Helper on 09.10.1998 as per Service Regulation and Board Proceedings. The petitioner was selected and appointed as Junior Assistant through internal selection on 19.05.2007. While the petitioner was so working in the office of the 5th respondent, the 2nd respondent *vide* letter dated 15.02.2016 stated that fixation of pay which was ordered under 33(b) of TNEB



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Service Regulation to the employees was withdrawn vide B.P.No.17 dated 08.03.2010 and letter dated 03.05.2010 and therefore excess payment may be recovered. Though the petitioner gave a representation on 04.03.2017 to the aforesaid letter of the respondent, the same was not considered and the impugned order dated 07.03.2017 was passed. The petitioner stated that without any notice and without considering the fact that the petitioner belonged to Group 'C' post, the recovery was sought to be made that too beyond a period of 5 years. The petitioner therefore was constrained to file the above writ petition.

3. The respondents filed counter stating that employees who had completed 5 years of service in the post of office Helper and Record Clerk were selected and appointed as Junior Assistant through internal selection and their pay was fixed under Regulation 33(b) of TNEB Service Regulations, as the post of Junior Assistant carried higher duties and responsibility than that of office Helper and Record Clerk. Accordingly, the scale of pay of the petitioner under service regulation 33(b) of the TNEB was fixed and salary was paid to the petitioner. Subsequently the board issued B.P.(CH).No.17 (Adm.Branch) dated



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08.03.2010 and Lr.No.81999/1461/G.56/G.561/ 2007-3, dated 03.05.2010,

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stating that fixation of pay for those who were selected to the post of Junior Assistant through internal selection as per orders issued in B.P.(CH).No.152, Administrative Branch dated 05.05.2007 from Record Clerk and office Helper shall be revised and fixed as per B.P.(FB).No.95, dated 20.11.1985, since the internal selection did not amount to promotion. Based on the above, the Board Office Audit Branch issued audit slip No.11 dated 15.11.2016 to recover the excess payment paid to the petitioner due to incorrect pay fixation. In pursuance of the audit slip, the impugned order came to be passed. The respondents therefore submitted that excess payment was paid to the petitioner and same was sought to be recovered through impugned order and hence the same could not be questioned.

4. The learned counsel for the petitioner submitted that no individual notice was sent to the petitioner and as the impugned order had civil consequences the respondents were bound to issue individual notice to the petitioner. The failure to issue individual notice to the petitioner violated the



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principles of natural justice. The learned counsel relying on the judgment of the Hon'ble Supreme Court in *Rafiq Masih's* case submitted that no recovery could be made beyond a period of 5 years and from employees of group 'C' service.

5. The learned counsel for the respondents on the other hand submitted that absolutely no prejudice was caused to the petitioner in as much as the petitioner was aware of the audit slip dated 15.11.2016 and also gave representation dated 04.03.2017 against the recovery proceedings. The learned counsel therefore submitted that there was no violation of the principles of natural justice.

6. I have heard both the learned counsels and have perused the material placed on record.

7. It is admitted that the petitioner gave her representation against the audit slip No.11 dated 15.11.2016 regarding revised pay fixation and recovery of excess amount, but the respondent while passing the impugned order dated 07.03.2017, did not consider the same, eventhough it was submitted one year



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prior to the passing of the impugned order. I am therefore of the view that the impugned order cannot be sustained and so the same is set aside. The respondents are directed to give show cause notice to the petitioner within a period of two (2) weeks from the date of receipt of a copy of this order on the proposed revision and recovery of excess payment. The petitioner shall submit her detailed reply within a period of two (2) weeks from the date of receipt of the show cause notice. The respondents shall on receipt of the reply consider the same and pass appropriate orders within a period of four (4) weeks on merits and in accordance with law.

The writ petition is allowed with the above directions. No costs.

Consequently connected WMP is closed.

19.08.2024

dsn

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No



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N.MALA,J.

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