



W.P. No.1309/2015

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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

| Reserved on | Pronounced on |
|-------------|---------------|
| 13.03.2025  | 03.04.2025    |

**CORAM**

**THE HONOURABLE MR. JUSTICE M.DHANDAPANI**

**W.P. NO. 1309 OF 2015**

**AND**

**M.P. NO. 1 OF 2015**

The Chairman-cum-Managing Director  
Power Grid Corporation of India Ltd.  
No.9, Institutional Area  
Katwaria Sarai, New Delhi 110 016.

.. Petitioner

**- Vs -**

1. The Presiding Officer  
Central Government Industrial Tribunal  
-Cum-Labour Court  
Shastri Bhavan, Chennai 600 006.
2. The General Secretary  
Power Grid National Workers Union (SR)  
400 KV Sub-Station  
Kannimangalam Via Chekkanurani  
Madurai 625 514.
3. The Chairman-cum-Managing Director  
National Thermal Power Corporation  
Corporate Centre, NPTC Bhavan  
Scope Complex No.7



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Institutional Area, Lodhi Road  
New Delhi 110 003.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records pertaining to the award dated 10.10.2014 passed by the 1<sup>st</sup> respondent in I.D. No.23 of 2009 and quash the same.

For Petitioner : Mrs. Rita Chandrasekaran, for  
M/s.Aiyar & Dolia

For Respondents : Mr. N.G.R.Prasad for  
Mr. K.A.Vimalkumar for R-2  
Mr. M.Viyajan for  
M/s.King & Partridge for R-3

### **ORDER**

Challenging the award passed by the 1<sup>st</sup> respondent in and by which amount equal to proportionate pay for the extra days of work done by the workmen was directed to be paid by the petitioner, the present writ petition has been filed.

2. It is the case as evidenced from the chronology of evidence as captured by the trial court that the members of the 2<sup>nd</sup> respondent Union were employees



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of the petitioner till 16.08.1991 and, thereafter, their services were transferred to the 3<sup>rd</sup> respondent and they are working with the 3<sup>rd</sup> respondent. The working hours of the petitioner was from 0900 to 1730 hours across the country and that the 2<sup>nd</sup> and last Saturdays were closed holidays along with all Sundays and other notified holidays. In the year 1985, the five day week system was introduced by the Government of India, which was adopted and implemented by the petitioner and all the rules and regulations of the petitioner were followed suit by the 3<sup>rd</sup> respondent as well. Before following the five day week pattern, the petitioner was following six day week for all its officers, irrespective of the status of the office. Only at the sub-stations, shift duty was followed in order to maintain power generation, transmission and distribution system, which was adopted by the 3<sup>rd</sup> respondent as well. It is the case of the workmen that the persons, who are employed in a five day work place are working 40 hours a week, while the persons employed in a six day work place are working 48 hours a week, thereby, the employees in a six day week system, do additional 52 days work in a year, which is discriminatory and, therefore, the persons, who are employed in a six day work place, should be compensated for the additional work done by them.



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Therefore, the industrial dispute was occasioned at the instance of the 2<sup>nd</sup> respondent herein.

3. Upon reference of the dispute to the trial court, the same was taken up on file and on behalf of the 2<sup>nd</sup> respondent herein, W.W.1 to 4 were examined and Exs.W-1 to W-24 were marked. On the side of the petitioner herein/1<sup>st</sup> respondent therein, M.W.1 and 2 were examined and Exs.M-1 to M-23 were marked. On analysing the materials, both oral and documentary, the trial court allowed the dispute and directed the petitioner herein to compensate the workmen employees of the projects and sites, except those working in shifts, who were in service on 2.8.1985 and continued to be in service as on 20.04.2007 by paying the amount equal to proportionate pay for the extra days of work done by them after 20.04.2007, within the time prescribed failing which the amount will carry interest at 9% p.a. Aggrieved by the said order, the present writ petition has been filed.

4. Learned counsel appearing for the petitioner, at the outset submitted that the dispute is hopelessly time barred by limitation, as it has been raised



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almost after a quarter of a century with no explanation being given for this inordinate delay of 22 years.

5. It is the further submission of the learned counsel that the working hours in the Corporate Office/Regional Officer prior to the issuance of the circular dated 2.8.1985 vis-a-vis the project office is entirely different as the Corporate Office/Regional Officer were working 6 days a week with 2<sup>nd</sup> and 4<sup>th</sup> Saturdays as off days every month unlike the project offices, which were functioning six days working without any off days on 2<sup>nd</sup> and 4<sup>th</sup> Saturdays. Thus there was a distinct and different working hours between Corporate Office/Regional Office and Project/site Office since inception of the 3<sup>rd</sup> respondent and, therefore, the inference that the employees at Project/Site Office were having holidays on two Saturdays prior to introduction of 5 day week system is erroneous.

6. It is the further submission of the learned counsel that the Memorandum of Conclusion dated September, 1985, had already concluded the demand between the trade unions and the 3<sup>rd</sup> respondent and the issue not having been diligently raised, is hit by limitation and the 2<sup>nd</sup> respondent cannot



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raise a dispute after 22 long years. It is the further submission of the learned counsel that when the employees/workmen have unconditionally accepted the terms of employment as 5 days working week for Corporate/Regional Head Quarters and 6 days working week for all other offices/establishment/project sites, the 2<sup>nd</sup> respondent cannot turn back, that too after 22 years and claim parity with the persons, who are provided with 5 days work week.

7. It is the further submission of the learned counsel that for a continuing wrong, the issue can be raised without bar of limitation, however, in respect of settled issue, that too of the year 1985, reopening of the same after several long years, in the year 2007, when the terms and conditions were guided by the settlements, that have already been concluded and this issue was never raised in any of the settlement, the trial court lost sight of the fact that the award is being passed in favour of a few workers, when the issue is a major issue relating to working hours, more especially when the 2<sup>nd</sup> respondent herein, being a member of the Apex Committee, had not canvassed the said issue during the settlement talks.



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8. It is the further submission of the learned counsel that reopening of a settled issue would affect the settled rights of third parties and, therefore, the claim cannot be entertained and in the present case, the settlements having settled the issue and no demur was shown by the workmen during the settlement, the issue cannot be reopened after 22 long years. In this regard, the decision of the Apex Court in ***Union of India & Ors. – Vs – Tarsem Singh (2008 (8) SCC 648)*** is relied on by the learned counsel to impress upon this Court that belated claim is a stale claim.

9. It is the further submission of the learned counsel that the extension of certain benefits to the persons working in Corporate/Regional Offices is an act of discrimination, is wholly erroneous as the same was given only to offset the extra burden. It is the further submission of the learned counsel that seven constituent Public Sector Units were merged to form the petitioner and the employees of the seven units were guided by different sets of working norms and the workmen of the all the seven units having accepted the terms of employment cannot now come and claim that the terms and conditions should be uniformly applied to the



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employees working in the Corporate/Regional Head Quarters and also to the offices/establishment/project sites.

10. It is the further submission of the learned counsel that the instant award directing to compensate the workmen employees of the projects sites belonging to the 3<sup>rd</sup> respondent, who were in service on 2.8.1985 to continued to be in service as on 20.04.2007 would lead to an anomalous situation, where similarly situated employees of the other constituent entities would also claim parity with the employees drawn from the 3<sup>rd</sup> respondent, who were under the respective corporations, but not party to the dispute, which would create chaos in the operation of the entire power sector. Therefore, the view taken by the 1<sup>st</sup> respondent is a narrow view without considering the larger ramifications involved as it creates a group within the very same employees doing the very same work, with one working for 5 days a week and another set of people working for six days a week, without extra benefit, thereby creating discrimination amongst two similarly placed employees.



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11. It is the further submission of the learned counsel that the trial court, while perceived an inequality, however, lost sight of the fact that the perceived inequality will end up triggering more industrial dispute by creating a class of workmen, who will get more benefits/compensation as compared to other employees who joined from other 6 constituent units and will lead to indiscriminate and fresh raising of industrial disputes across the country leading to industrial unrest.

12. Without advertent to any of the consequences and also the materials with regard to the aspect of discrimination, which is sought to be projected, the trial court had erroneously applied the decisions of the Apex Court to the case on hand and had come to an erroneous conclusion, which if allowed to stand, will not only cause industrial unrest, but would be against the very provisions, which have been accepted by the workmen and, therefore, the present impugned award deserves to be set aside.

13. Learned counsel appearing for the 2<sup>nd</sup> respondent, in his usual vehemence and inimitable style submitted that the discrimination amongst the



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class of very same employees, who are discharging the very same duties offends Article 14 of the Constitution, thereby, it creates an inequality amongst to equals, who render the very same work.

14. It is the further submission of the learned counsel that even before the seven constituent units were brought under a single umbrella of the petitioner, the circular dated 2.8.1985, viz., Ex.M-3 had come into existence, which is for the 3<sup>rd</sup> respondent alone and within a single unit, there arose a discriminatory situation between two similarly placed individuals discharging the very same work.

15. It is the further submission of the learned counsel that when two persons of the very same establishment discharge the very same work, there could be no discrimination in the form of 6 day work week for one group and 5 day work week for the other group, merely on the basis of the place of their work, be it in the Corporate Office/Regional Head Quarters. It is the further submission of the learned counsel that the circular was issued in the year 1985, but there is no whisper about any settlement arrived at between the 3<sup>rd</sup>



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respondent and the 2<sup>nd</sup> respondent and in the year 1992, the Act was enacted, leading to the formation of the petitioner and, thereafter, the constituents of the seven units, which merged into the petitioner had entered into the talks in which the 6 day work week was not brought into focus as there were many other issues upon constitution of the petitioner and, therefore, the mere no raising of any issue with regard to the 6 day work week cannot be taken to mean that the 2<sup>nd</sup> respondent had accepted whatever was given by the petitioner under the settlement.

16. Thereafter, in continuation of the other issues, the present issue was raised, which was referred as an industrial dispute leading to the reference and passing of the present award, which cannot be said to be a delay at the hands of the 2<sup>nd</sup> respondent. The overall scenario in the constitution of the petitioner and the constituent units should be looked at compositely to view at the delay and looking at the delay in isolation cannot be proper and rightly the said aspect has been considered by the trial court, which had ruled in favour of the 2<sup>nd</sup> respondent/workmen, which does not require any interference.



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17. It is the further submission of the learned counsel that the trial court has adverted to the ratio laid down by the Apex Court and applied it to the facts of the present case properly and it cannot be held that an erroneous interpretation of law has been spelt out by the trial court by not properly interpreting the ratio laid down by the Apex Court. The award does not suffer from any error of jurisdiction or perversity or irrationality and the same, therefore, does not call for any interference at the hands of this Court.

18. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

19. It is not in dispute that prior to the merger of the 3<sup>rd</sup> respondent with the other 6 constituent units for forming the petitioner, 6 day week system was in vogue irrespective of the employees of the Corporate Offices/Regional Head Quartered Officers or the employees working at the sites, projects or transmission lines, barring the shift staff. Therefore, the system that was being followed was irrespective of the work place of the employees. Initially 6 day



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week system was in prevalence with second and fourth Saturdays as holidays.

W.W.1 and W.W.2 had deposed about the aforesaid fact with regard to the work system that was in vogue prior to the issuance of the circular dated 2.8.1985.

The evidence of W.W.1 and W.W.3 on the aforesaid lines has not been disputed by the petitioner and the 3<sup>rd</sup> respondent. When equally placed persons, both at the Corporate/Regional Head Quartered Office and persons working at sites, projects, etc., were determined on a single scale, all of a sudden through the circular dated 2.8.1985, there occurred a tilt in which the Corporate/Regional Head Quartered Officers were provided with 5 day week while the similarly placed persons at sites, projects, etc., were provided with 6 day week. However, no reasons for extending the time for the persons working in the sites/project, etc., was spelt out resulting in the 6 day week and there is also no additional remuneration that has been provided to the persons with 6 day week, who were identically placed with the persons with 5 day week.

20. In this regard, it is not the case of the petitioner or the 3<sup>rd</sup> respondent that subsequent to the issuance of circular dated 2.8.1985, there were alteration in the service conditions of the employees working at the Corporate/Regional



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Head Quartered Officers and the employees working at the Sites, Projects, etc.

Except for the work week being altered between the persons working at the Corporate/Regional Head Quartered Officers and the persons working at Sites/Projects, etc., there was no change in the service conditions of the workmen. When the service conditions remained unaltered for both the groups of employees even after the circular, what was provided to the persons ought to have continued even after the circular and modifying the service conditions, viz., 5 day work week for one set of employees and 6 day work week for another set of employees, who were and are identically placed is nothing but a clear violation and discrimination of Article 14 of the Constitution.

21. It is further to be pointed out that upon issuance of the circular dated 2.8.1985, it is the claim of the petitioner that the employees did not raise the issue of 6 day work week at the earliest point of time and there envisioned a delay, but it is to be noted that even according to the petitioner and the 3<sup>rd</sup> respondent, the Union which raised the dispute is a minority Union and, therefore, raising the said grievance at the settlement cannot materialise, as the 2<sup>nd</sup> respondent would not have been called for the talks during the bipartite



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settlement. However, a perusal of the order passed by the Labour Court reveals that the issue was raised during the settlement talks during the year 1989, however, the same was rejected without giving any reason and, thereafter, on and from 1992, the ordinance was promulgated resulting in the formation of the petitioner and all the 7 constituent units merging together to form the petitioner entity.

22. Further, it transpires from the order that the inaction on the part of the 2<sup>nd</sup> respondent in raising the issue at the earliest point of time precludes the 2<sup>nd</sup> respondent from raising the dispute almost two decades later. However, based on Ex.M-4, the Memorandum of Conclusion dated 17<sup>th</sup> and 18<sup>th</sup> Sept., 1985, as has been recorded in the award of the trial court, as aforesaid, demand was made by the workmen with regard to the extended working hours without any additional payment and demand was made for reduction in the weekly working hours or suitable compensation in lieu thereof, in respect of employees working at sites/projects, etc., however, the said demand was rejected that the 5 day work week system has been introduced by the Government of India and that the employees in the Corporate/Regional Head Quartered Officers cannot be



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equated with the employees at Sites/Projects, etc. However, it is to be pointed out that there was no basis to come to the conclusion that both the employees stood on a different footing as all along, both the sets of employees were governed by the same scales of pay and conditions of service, including 6 days week and there was no discrimination between the two sets of employees.

23. It is the stand of the petitioner and the 3<sup>rd</sup> respondent that the settlement of the year 1989 and even thereafter, no reference was made with regard to the 5 day work week and, therefore, it stood concluded and the 2<sup>nd</sup> respondent is estopped from raising the issue once again. It is seen from the records that the issue was raised during the settlement of the year 1989. It is not as if that the issue was raised and addressed and there is a clear recording in the settlement that the agreement was in full and final settlement of all the demands and issues incorporated in the charter of demands. However, there is a clear finding by the Tribunal that the issue was raised and rejected. Merely because the issue has been raised and rejected cannot be taken to mean that the issue was left out or stood concluded and that it was never canvassed and that the 2<sup>nd</sup> respondent had closed the issue from being taken up any further.



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24. Delay is always fatal to a case unless it is properly explained. However, not on all occasions, it can be utilised for the purpose of defeating the rights of the labour, as in the case of settlement, not all the issues gets resolved at one go in one settlement. Certain issues gets carried through for a long time, thereby it becomes a continuing issue, which could be taken up when time and place suits it. Though the decision in *Tarsem Singh case (supra)* has been relied on by the learned counsel for the petitioner, which has been considered by the trial court in which a finding has been recorded that in case of a service claim, which is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, though the Apex Court has held that normally a belated service related claim shall be rejected on the ground of delay and laches or limitation.

25. As pointed out above, there could be no quarrel with the ratio laid down above, however, the said service claim, as has been discussed by the Apex Court, pertains to individual claim, where explanation for the delay is *sine qua non* for considering condonation of the delay. In effect, it is mandatory in a service claim to explain satisfactorily the reasons for the delay. However, the



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present case revolves around labour dispute, which cannot be construed specifically to be a service claim, as the claim with regard to grant of a benefit devolves upon all the members of the labour and it would be conditions relatable to service and it would not be a specific service claim of an individual.

26. When a claim affects the workforce as a whole, more especially on the basis of an administrative decision, then the grievance sought to be espoused with a delay by a group of workmen cannot be put against the entire workforce to grant the relief, as it affects the rights of all the labour; but so long as it does not affect the rights of the other labour or third parties, there could be no impediment to reopen the issue and agitate the claim. This is what has been conveyed through the decision in *Tarsem Singh case*, which has been properly captured by the Tribunal, while appreciating the materials on record in line with the aforesaid decision. The said view expressed on the basis of the Apex Court's ratio is not only logical, but also practical as the workmen cannot be denied their space and claim, when it is their right, which they were enjoying, but for the administrative order based on a circular by the Government of India, which



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granted a better working condition, but they were robbed of the same by the petitioner without any proper and logical reasoning.

27. In the present case, the dispute which has been agitated has not hindered on the rights of other labour or third parties, but is only to safeguard the rights of the workmen, who are represented by the 2<sup>nd</sup> respondent, against whom discrimination was being made in the form of extended duty on the 6<sup>th</sup> day of the week, while the other persons have been given the benefit of 5 day work week. The said act of the petitioner is grossly in violation of Article 14 of the Constitution and the same cannot be allowed to stand, which fact has been properly appreciated by the trial court while passing the impugned order.

28. One other aspect that asserts the clarity in the order passed by the trial court is that, not only the interests of the workmen were safeguarded, but equally the interests of the petitioner were also safeguarded. This would be evident from the fact that though the circular was issued on 2.8.1985, however, only after 22 years, the dispute was raised by the workmen leading to the impugned order. The delay on the part of the workmen, though they had



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canvassed their right for 5 day work week, which stood rejected at the time of settlement is definitely a continuing wrong, but the delay in raising the dispute cannot be put in detriment to the petitioner as the issue was already raised by the workmen and appreciating the aforesaid facts, the trial court did not award the benefit between 2.8.1985 and 20.04.2007, viz., the date on which the dispute was raised, meaning thereby that the relief was granted only prospectively and not retrospectively. Rightly appreciating all the materials, the trial court had granted only prospective benefit, while rejecting retrospective benefit, which is just and reasonable and balancing the scales of justice in favour of both the parties and, therefore, the same by no stretch could be termed to be erroneous and perverse and the same requires to be confirmed by this Court. All the aspects of the issue have been properly taken into consideration by the Tribunal while passing the impugned order and the same does not call for any interference.

29. For the reasons aforesaid, this Court does not find any perversity or arbitrariness in the impugned order and, accordingly, this writ petition fails and the same is dismissed confirming the order dated 10.10.2014 passed by the 1<sup>st</sup>



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respondent in I.D. No.23/2009. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

**03.04.2025**

Index : Yes / No

GLN



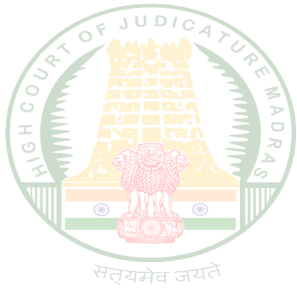
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To

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**M.DHANDAPANI, J.**

**GLN**

**PRE-DELIVERY ORDER IN  
W.P. NO. 1309 OF 2015**

**Pronounced on  
03.04.2025**