



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2025

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.28077 of 2011

P.Balakrishnan

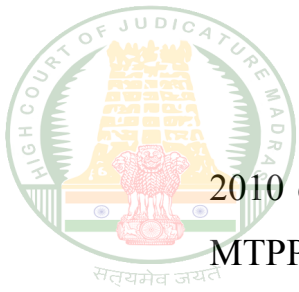
... Petitioner

Vs.

1. The Tamil Nadu Generation and
Distribution of Corporation (TANGEDCO),
Rep. by its Chairman & Managing Director,
144, Anna Salai, Chennai – 2.
2. The Secretary, TANGEDCO,
144, Anna Salai, Chennai – 2.
3. The Superintending Engineer/ Civil,
Mettur Thermal Power Project/ Stage III (1 x 600 MW),
Mettur Dam -1.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd Respondent relating to his Memorandum (Per.) No. 89532/A3/A31/2009-1 dated 16.12.2009, Letter No. 4543/A3/A31/2010-1 dated 17.05.2010, Letter No. 87345/A2/A21/2010-1 dated 26.11.2010, Letter No. 9661/A2/A21/2011-1 dated 10.03.2011 and consequential orders of the 3rd Respondent in Memo No. 3129/0536/SE/C.I & Proj.Co.Ordintr/stageIII/ MTPP/AAdm O/AI/F.02/



2010 dated 03.06.2010 / 08.06.2010, Memo No. 7627/1119/SE/C/ Stage III/ MTPP/AAdmO/A1/F.EE/2010-1 dated 09.12.2010 and Memo No.1926/0238/SE/Civil/ Stage III/AAdmO/A1/F.EE/2011 dated 23.03.2011 and quash the same as illegal and without authority of law and direct the Respondents to permit the petitioner to exercise his option to remain in the existing scales of pay (pre revised) till the date of movement to Selection Grade, namely, 26.02.2010 and thereafter revise the petitioner's pay scale and extend all the consequential benefits arising there from.

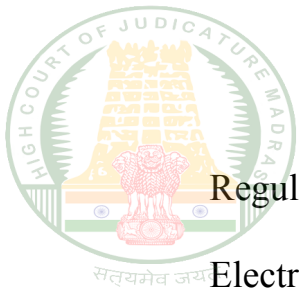
For Petitioner : Mr.V.Radhakrishnan, Senior Counsel
for Mr.K.Sasindran

For Respondent : Mr.A.David Sundar Singh, Senior Counsel

ORDER

The brief facts that are relevant for disposal of this writ petition are as under:-

1.1. While the petitioner was working as Executive Engineer/ Civil, having been promoted to the said post on 15.07.2002, the said post was re-designated as 'Superintendent Engineer/ Civil (non-independent)'. While he was working as such, the revision of wages have taken place in the respondent Board by virtue of the orders issued in (Permanent) B.P.(Ch) No.224, dated 21.11.2009 whereby, the respondent Board issued regulations viz., Tamil Nadu Electricity Board Revised Scales of Pay (Officers'



Regulations), 2009, in exercise of its power under Section 185 of the Electricity Act, 2003, revising the wages with effect from 01.12.2007.

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In terms of the said regulations, 2009, the officers were given an option either to remain in the existing scales of pay till certain contingencies fulfilled in terms of Regulation No.8 of the said regulations.

1.2. The said regulation 8 reads as under:-

“8. Option:-

(1) An officer may exercise option to remain in the existing scales of pay until any of the following dates:

(i) to remain in the existing scale of pay until the date on which he earns his next or any subsequent increments in the existing scale of pay;

(ii) on the date of promotion or on the date of fixation on promotion;

(iii) on the date of movement to Selection Grade/Special Grade.

(iv) on the date of appointment to a post by internal selection.

(v) on the date of completion of 15 years of regular service till 18.11.2009 (i.e.the date of settlement) to avail the benefit of service weightage allowed.



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Provided that, if an officer does not exercise his option within the period specified below he shall be deemed to have opted for the revised scales of pay with effect from the 1st December, 2007 taking into account his pay as on that date.

*(2) The **option shall be exercised** in writing in the Form given in **Annexure-VI** **within three months** from the date of issue of these Regulations.*

Provided that in the case of an officer who was on leave on that date or who was discharged from service before that date or was not in the service on that date, or who was on deputation or on foreign service, the option shall be exercised within a period of three months from the date on which he returns from leave, or reappointed to the post, or rejoins duty in the Board, as the case may be.

(i) Where an officer is under suspension on the 1st December 2007, the option may be exercised within three months from the date on his return to duty if that date is later than the last date prescribed in this sub-regulation (2).

*(ii) The **option once exercised shall be final.***

(iii) If an officer opts to remain in the existing scale of pay for a specified period, he shall be entitled to draw pay in the existing pay scale during that period and also the amount of dearness allowance and



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other allowances at the existing rates and his pay shall be fixed in the revised pay scale at the end of the period specified in accordance with the provisions under these Regulations.

NOTE: Persons who have died on or after 1st December 2007, shall be deemed to have opted for the revised scales on and from the 1st day of December 2007 or such later date as is more beneficial to their dependent, if the revised pay scales are more favourable and in such cases, necessary action for payment of arrears shall be taken by the Head of Office immediately.”

1.3. According to Mr.V.Radhakrishnan, learned Senior Counsel appearing for the petitioner, the petitioner has exercised his option on 06.01.2010 and the same was reiterated again on 15.02.2010 to continue in existing scales of pay till he was granted selection-grade in the post of 'Superintendent Engineer/ Civil (non-independent)', which was due to the petitioner on 26.02.2010. The said claim of the petitioner was rejected by the respondents by passing the impugned orders on the grounds that such an option in terms of Regulation No.8 is required to be exercised on or before 18.11.2009 in terms of the clarificatory orders issued by the Secretary of the respondent Board/ Respondent No.2 but not made by the petitioner. It is aggrieved by the said orders passed from time to time rejecting the request of



the petitioner, the petitioner approached this court by filing the present writ petition.

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2. From the perusal of the impugned orders, it is evident that the reasons for rejection of the request of the petitioner is that such an option is required to be exercised on or before 18.11.2009 and assuming that the petitioner has made such a request on 26.02.2010 i.e., the date on which the petitioner became eligible for grant of selection grade in the post of 'Superintendent Engineer/ Civil (non-independent)'.

3. From the perusal of the impugned orders, it appears that the basis for rejecting the claim of the petitioner is clarification dated 16.12.2009 issued by the Respondent No.2/ Secretary.

4. The relevant paragraph from the clarification dated 16.12.2009 issued by the Respondent No.2 reads as under:-

2. It is hereby clarified that employees can opt to remain in the existing scales of pay (pre-revised scale of pay) upto any period of their choice between 01.12.2007 to 18.11.2009, i.e. upto the date of Settlement. As such, in the case of employees/officers who



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moved to Selection Grade/Special Grade on or after 01.12.2007 and upto the date of settlement, and opted for Revised Scale of Pay with effect from the date of movement to Selection Grade/Special Grade, duly foregoing the arrears, their pay shall be fixed in the Revised Scale of Pay and the applicable Grade Pay corresponding to the pre-revised scale, of pay drawn by them in the Selection Grade/Special Grade post on the date of such option. Further, in the case of employees/officers who moved to Selection Grade/Special Grade on or after 01.12.2007, i.e., after fixation of pay in the revised scale with effect from 1.12.2007, their pay shall be fixed on the date of movement to Selection Grade/Special Grade with reference to the orders in para-3(vii) and para-1(vii) of the Board Proceedings cited respectively.

5. By virtue of the above said qualification, the Respondent no.2 clarified that the employees can opt to remain in the existing scales of pay up to the period of their choice between 01.12.2007 to 18.11.2009 i.e., up to the date of settlement. Admittedly, there is no settlement in respect of the officers cadre to which the petitioner herein belongs.

6. As already noted above and as seen from the Regulation No.8, the same enables the officers to exercise their option under Regulation No.8



within three months from the date of issue of the said regulations i.e., from 21.11.2009 and the said three months time is available up to 20.02.2010.

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According to petitioner, he has already exercised such an option on 06.01.2010 and again on 15.10.2010. If that be the case, such an option is well within the period of three months stipulated under Regulation No.8(2) of the Regulations, 2009.

7. Then the question that would arise for consideration is whether the Respondent No.2/ Secretary is competent to restrict time limit that was granted under the Regulations by the Board.

8. As already noted above, the Regulations, 2009 were issued in exercise of power under Section 185 of the Electricity Act, 2003 and the Regulation 2 of the Regulation 8 unambiguously says that the officers can exercise their option within three months from the date of issuance of the said Regulations. Therefore, the clarificatory memorandum issued by Respondent No.3 on 16.12.2009, restricting the time limit up to 18.11.2009 is totally without any competency.



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9. Be that as it may, the very regulations were issued on 21.11.2009, giving an option to the officers to exercise their option to continue in the pre-revised scales of pay till fulfilling of certain contingencies and therefore, exercising an option even prior to the date of issuance of the said regulation does not arise and such a clarification issued by the Secretary is totally without application of mind and without competency.

10. Thus, the reasons assigned in the impugned order stating that the petitioner has failed to exercise option on or before 18.11.2009 is totally perverse and as such, all the impugned orders are wholly unsustainable and the impugned orders bearing Memorandum (Per.) No. 89532/A3/A31/2009-1 dated 16.12.2009, Letter No. 4543/A3/A31/2010-1 dated 17.05.2010, Letter No. 87345/A2/A21/2010-1 dated 26.11.2010, Letter No. 9661/A2/A21/2011-1 dated 10.03.2011, Memo No. 3129/0536/SE/C.I & Proj.Co.Ordintr/stageIII/MTPP/AAdm O/AI/F.02/ 2010 dated 03.06.2010 / 08.06.2010, Memo No. 7627/1119/SE/C/ Stage III/ MTPP/AAdmO/A1/F.EE/2010-1 dated 09.12.2010 and Memo No.1926/ 0238/SE/Civil/ Stage III/AAdmO/A1/F.EE /2011 dated 23.03.2011 are set aside.



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11. Accordingly, the writ petition is **allowed** directing the respondents to reconsider the claim of the petitioner strictly in terms of the Regulation No.8(2) for continuing in the pre-revised scales of pay till 26.02.2010 i.e., the date on which the petitioner would be entitled for the secondary grade and then to migrate the petitioner to the revised scales of pay, as brought into force through proceedings bearing (Permanent) B.P.(Ch) No.224, dated 21.11.2009 and accordingly, re-fix the pay of the petitioner, if the petitioner is found to be eligible in terms of the regulations.

12. At this stage, it is brought to the notice of this court that the petitioner has already attained the age of superannuation during the pendency of this writ petition and in view of the same, the respondents are directed to complete the entire exercise, as expeditiously as possible, at any rate within a period of eight weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions, if any, shall stand closed.

30.01.2025

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Index : Yes / No

Speaking order / Non-speaking order



Neutral Citation : Yes / No

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To

1. The Chairman & Managing Director,
Tamil Nadu Generation and Distribution Corporation (TANGEDCO),
144, Anna Salai, Chennai – 2.
2. The Secretary, TANGEDCO, 144, Anna Salai, Chennai – 2.
3. The Superintending Engineer/ Civil,
Mettur Thermal Power Project/ Stage III (1 x 600 MW), Mettur Dam -1.

MUMMINENI SUDHEER KUMAR, J.

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